
Decision of the Supreme Court
in Christian Science Case

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IN CHRISTIAN SCIENCE CASE

Complete Text of the Findings of the Full Bench is made known

1395 EUSTACE v. DICKEY
1402 SAME v. SAME

Exceptions of Emilie B. Hulin
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Appeal of Daisy L. Krauthoff et al.

RUGG, C. J. This is a suit in equity. The plaintiffs are three persons, who by succession are trustees under a deed of trust executed by Mary Baker G. Eddy, the founder of "Christian Science" so called, as donor, on January 25, 1898, to three persons therein named as trustees. The defendants are four persons alleged to be trustees under another deed of trust executed by Mrs. Eddy dated September 1, 1892, and also to be Directors of The First Church of Christ Scientist in Boston, Massachusetts, and two other persons, each alleged to be claiming to be a trustee and director in association with the other four. The basic question is whether the defendants have power to remove one of the plaintiffs from the position of trustee.

The answer to that question depends upon the true interpretation of these deeds of trust executed by Mrs. Eddy and whatever other matters rightly may be considered in ascertaining their meaning.

The deed of Mrs. Eddy of January 25, 1898, whereby were created the trusts hitherto administered by the plaintiffs, hereinafter called the trust deed, related wholly to personal property. The declared object of that trust, recited in the early part of the trust deed, is "for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me." It transferred title to certain goods and chattels connected with the publishing business conducted for the promotion of the interests of Christian Science, which theretofore had been carried on by a corporation called the Christian Science Publishing Society. The grantees were three individuals, who accepted the transfer upon the trusts set forth in the deed. These are stated in paragraphs numbered from 1 to 14, both inclusive. The first of these requires the trustees to use the property exclusively for carrying on the business, which had been conducted by the Christian Science Publishing Society,

"in promoting the interests of Christian Science." Among these trusts were provisions to the effect that the trustees should energetically and judiciously manage the publishing business under the unincorporated name of "The Christian Science Publishing Society" on a strictly Christian basis and "upon their own responsibility and without consulting me [Mrs. Eddy] about details, subject only to my supervision, if I shall at any time elect to advise or direct them," should account for and pay over the profits of the business every six months to the treasurer of The First Church of Christ Scientist in Boston, Massachusetts, subject to the order of "The First Members of said Church," who were empowered to make the final disposition "only in accordance with the rules and by-laws contained in the Manual of said Church," and should employ and fix compensation of necessary help, assistance and persons to conduct the business and "To prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches." The annual compensation of the trustees was to be \$1000 each "or such salary as the said Church may determine from time to time." The trustees were required at all times to be "loyal, faithful and consistent believers and advocates of the principles of Christian Science as taught by me in my book." Clause 8 of the trust deed is in these words: "Said trustees shall have the direction and supervision of the publication of said Quarterly and also of all pamphlets, tracts and other literature pertaining to said business, using their best judgment as to the means of preparing and issuing the same, so as to promote the best interests of the Cause, reserving the right to make such changes as I may think important." In clause 10 of the trust deed, it is provided that vacancies among the trustees should be filled by the donor, if she so elected, otherwise by the remaining trustees, and that "The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient."

The facts are found by the master, in the light of which these words of this trust deed must be interpreted. Mrs. Eddy founded Christian Science. In

1879 she organized a church and became its pastor. In 1892 she reorganized the church. Under date of the first of September of that year she conveyed to four persons "as trustees as hereinafter provided and to their legitimate successors in office forever" land in Boston upon which within five years they were required to build a church edifice. It was provided that the "grantees shall be known as the Christian Science Board of Directors." Thus that board first was constituted. "The First Church of Christ Scientist" was not organized until September 23, 1892. The deed declared that the grantees should "constitute a perpetual body or corporation under and in accordance with section one, Chapter 39 of the Public Statutes of Massachusetts. The master has found that the grantees never organized themselves as a corporation and never became such by virtue of their duties or similarity to deacons and wardens. The mere declaration of the grantor could not make them a corporation.

The directors were required, upon the completion of the church building, to "elect a pastor, reader or speaker to fill the pulpit who shall be a consistent Christian Scientist," to maintain public worship in accordance with the doctrines of Christian Science in said church and to that end they were "fully empowered to make any and all necessary rules and regulations." The directors were enjoined not to allow in the church building any preaching or other religious services not consonant and in strict harmony with the doctrines and practice of Christian Science as taught and explained by Mrs. Eddy. The directors also were required to maintain regular preaching, reading or speaking in the church on each Sabbath and to rebuild the church under conditions named. The number of directors named in the deed of September 1, 1892, was four. In addition to the duties imposed on them by that deed, they have exercised other powers and performed additional functions, assigned to them by the Church Manual, all of a highly important nature and covering a wide field. There was no rule fixing their number until February 1903 when a by-law was adopted, which has since continued in force, establishing their

number at five. By the name "Christian Science Board of Directors" originally the four persons named as trustees by the deed of September 1, 1902, were described. As often, if not universally, used thereafter in the Church Manual, that name designates the board of five exercising powers and performing functions not derived from the deed but from the Church Manual.

The master also has found that the church has never become incorporated but has continued from the first an unincorporated religious association. It has worshipped regularly to the present in the edifice erected by the directors. "The First Church of Christ, Scientist, in Boston, Mass.," was organized on September 23, 1892, by eleven persons among whom were the four named as trustees and constituted directors in the deed of September 1, 1892. These eleven persons together with one other were voted to be "First Members of the First Church of Christ, Scientist." Others designated as "First Members" were added from time to time by vote of "First Members." The voting power in the church always has been confined according to its polity to "First Members." Members of the church had no voting power. The First Church of Christ, Scientist, at the instance of the founder first adopted rules and by-laws in 1895. These were radically changed from time to time during the life of Mrs. Eddy and many different editions of them called the "Church Manual" have been published. In every edition the names of the Christian Science Board of Directors have been printed under the caption "Church Officers" together with the names of other officers of the church. This is true of those editions issued before January 25, 1898. At that time important functions of the church such as the election of all officers, the appointment of missionaries, the appointment and removal of readers of the church to conduct its services, amongst others, were vested in the board of directors by the Church Manual. Although it was not until 1908 that a by-law of the church expressly included a board of directors among the officers, it always has been provided by a by-law that all officers of the church should be elected by the board of directors.

The provisions respecting First Members in force at the time of the trust deed of January 25, 1898, were that their regular meetings were to be held semi-annually, that they should vote on the admission of candidates and attend to the transaction of any church business that properly might come before them. Their number should not be permitted to fall below forty and seven constituted a quorum. It was provided in the Church Manual of 1898 that the number of First Members should not exceed fifty, and in several subsequent editions one

hundred was fixed as the maximum number.

Subsequent events have introduced new factors with reference to which the trust deed must now be applied. In January, 1901, the First Members adopted a by-law providing that "The business of the Mother Church [another name by which The First Church of Christ, Scientist, was known] hitherto transacted by the First Members shall be done by its 'Christian Science Board of Directors.'" This by-law was accepted and acted upon forthwith by the entire church membership without objection, and has so continued to be observed until the present. Almost immediately after the adoption of this by-law, at Mrs. Eddy's request or with her approval, a by-law, to the effect that vacancies among the trustees of the Christian Science Publishing Society (the trustees created by the trust deed of January 25, 1898) might be declared by the First Members and the directors, was changed so as to vest that power exclusively in the Christian Science Board of Directors. Every by-law or amendment since adopted was transmitted by Mrs. Eddy to the Board of Directors alone, by whom it was adopted. It is manifest that this procedure had the approval of Mrs. Eddy. After January, 1901, the First Members never undertook to transact any business of the church and no new First Members were elected. In 1903 a by-law was adopted by the Board of Directors changing the name of "First Members" to "Executive Members" and in 1908 another by-law was adopted repealing all provisions concerning Executive Members and providing that "there being no further necessity for their organization, they shall be and hereby are disbanded." This occurred about two years before the passing on of Mrs. Eddy, and was approved, if not originated, by her. There has been no objection or protest to this. No meetings of First or Executive members have been held since that time. There has been continuous acquiescence in the binding force of this by-law by the entire membership of the church. All by-laws and provisions of the Church Manual were adopted during the life of Mrs. Eddy and substantially every one was suggested or proposed for adoption by her. So far as concerns the government of the church, treating it as an ecclesiastical organization, the First Members, who alone had voting power, have been abolished and have ceased to exist and the entire management has passed into the hands of the directors, a self-perpetuating body, all this at the suggestion and with the approval of Mrs. Eddy.

The Church Manual in force in January, 1898, bore upon its title page "Church Manual of the First Church of Christ, Scientist in Boston Massachusetts by Mary Baker G. Eddy." With slight modifications, this has continued to be the title page of every edition of the Church Manual. The

last several editions issued during the life of Mrs. Eddy contained provision that "This Manual shall not be revised without the written consent of its author." Since the Church Manual on its face purports to be the work of Mrs. Eddy as author and the master has found it to be proved that substantially all its provisions were suggested or proposed by her, it is apparent that there can now, since the decease of Mrs. Eddy, be no change in the provisions of the Church Manual in accordance with its terms.

The trust deed made provision for the removal of a trustee by the concurrent action of the First Members and the directors of the church. That is the effect of the clause conferring upon them "the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." In this context, the power to declare a vacancy is the equivalent of the power of removal.

The precise question to be decided is whether under these circumstances one of the trustees can be removed by the board of directors, since the First Members have been deprived of all ecclesiastical power and have been disbanded in accordance with the polity of the church.

Every instrument in writing, although it cannot be varied or controlled by extrinsic evidence, must be interpreted with a view to all the material circumstances of the parties at the time of its execution, in the light of the pertinent facts within the knowledge of those who signed it and in such manner as to give effect to the main end designed to be accomplished by the instrument. *Best v. Berry*, 189 Mass. 510. *Polsey v. Newton*, 199 Mass. 450. *Simonds v. Simonds*, 199 Mass. 552. *Cotting v. Boston*, 201 Mass. 97. *Bullard v. Leach*, 213 Mass. 117. *Tax Commissioner v. Putnam*, 227 Mass. 522, 523, 524. *Attorney General v. Methuen*, 236 Mass. 564, 573. It is a cardinal rule in the interpretation of trust instruments that they are to be so construed as to give effect to the intent of the founder of the trust as manifested by the words used in the light of all the surrounding facts, unless inconsistent with some rule of law or repugnant to the terms of the instrument. *McCurdy v. McCallum*, 186 Mass. 464, 469. *Ware v. Minot*, 202 Mass. 512. *Taft v. Stearns*, 234 Mass. 273, 277. The decision of the question concerning any trust instrument depends upon the intention of the founder as manifested by the words used. An omission to express an intention cannot be supplied by conjecture. But if a reading of the whole trust instrument produces a conviction that a particular interest or power must have been intended to have been given not expressed by formal words, the court must supply the defect by implication, and so mould the language of the founder of the trust as to carry

into effect the intention which it is of opinion has by the instrument as a whole been sufficiently declared. This principle has been chiefly invoked in the interpretation of wills but is equally applicable to a trust deed like that here involved. *Metcalfe v. Framingham Parish*, 128 Mass. 370, 374. *Boston Safe Deposit Co. v. Coffin*, 152 Mass. 95, 100. *Sanger v. Bourke*, 209 Mass. 481, 486. *Tibbetts v. Tomkinson*, 217 Mass. 244, 252. *Lamb v. Jordan*, 233 Mass. 335, 340. The trust deed now under consideration must be construed and interpreted according to these principles. The avowed purpose of the trust deed of January 25, 1898, was for "more effectually promoting and extending the religion of Christian Science." The business of publishing was to be conducted "in promoting the interests of Christian Science." The profits derived from that business were to be paid to the treasurer of the church who was authorized to dispose of it only in accordance with the manual of the church. Preparation of religious publications is the chief business of the trustees.

It is manifest from the structure of the trust deed as well as from its express words that the single and only design of the founder was to promote and extend the religion of Christian Science as taught by Mrs. Eddy. Every part of the trust deed reinforces and makes even more plain the avowed purpose of Mrs. Eddy that her sole and completely dominating aim in establishing the trust was to promote and extend the religion of Christian Science as taught by her. The administration of the trust must continue to be directed exclusively to the accomplishment of that object alone.

A trust of that nature cannot be revoked or modified in the absence of reservation of an express power to that end by the donor. *Lund v. Thorp*, 227 Mass. 474. The deed in question created a trust complete in itself. By its own phrase it was declared to be upon the "perpetual and irrevocable Trust and confidence" therein set out. The delivery by the donor of the trust deed and of the property thereby transferred and the acceptance thereof by the grantees and the performance by them of the trust thereby established was an executed trust. It must be construed and applied according to its terms. *Crawford v. Nies*, 224 Mass. 474. *Elliot v. Trinity Church*, 232 Mass. 517.

The clause at the end of paragraph eight which conferred upon the trustees direction and supervision of the publication of the Quarterly and all tracts and pamphlets, "reserving the right to make such changes as I may think important," is not a reservation of a general or special power of revocation of the trust itself or of any of its terms or provisions. The context shows that that clause refers only to the direction and supervision of the trustees over publications. Its

scope and force are confined to the particular subject matter of that paragraph. It vested in the donor the right of modifying and altering the publications to be issued "to promote the best interests of the Cause." The power there retained concerned the publications and did not extend to the whole frame of the trust.

The words "First Members" occur twice in the trust deed, in paragraph four and in paragraph ten. The context in paragraph four is that the trustees shall keep accurate books of account and shall pay all expenses of the publishing business and "once in every six months shall account for and pay over to the treasurer of The First Church of Christ Scientist in Boston, Mass., the entire net profits of said business. . . . Said treasurer shall hold the money so paid over to him subject to the order of 'The First Members' of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church." The "First Members" of that church thus were constituted by the trust deed the sole body by which the net income of the publishing business as conducted by the trustees could be disbursed. Confessedly the net profits thus paid over have been very large in the aggregate. They must constitute a substantial element in the promotion and extension of Christian Science as taught by its leader. The First Members were an integral part of the organization of "The First Church of Christ Scientist." They were selected for that reason. They were not coordinate, subsidiary, ancillary trustees. They were too numerous to qualify as trustees. Their duty was to disburse the net income, not in conformity to their own judgment, but only in accordance with the rules and by-laws contained in the manual of that church. In the earliest edition of the manual, by which that church was governed, and in all subsequent editions, there is printed as a foreword an extract from the writings of Mrs. Eddy to the effect amongst other matters that the "Rules and by-laws in the Manual . . . were impelled by a power not one's own, were written at different dates and as the occasion required." The edition of the manual in use on January 25, 1898, the date of the trust deed, was designated the seventh. It was different in material particulars from those which had preceded it. It is manifest that the trust deed was intended to be made subject, so far as it concerned the officers of the church and their powers and duties touching the disbursement of the net income paid by the trustees to the treasurer of the church, to such changes as the occasion might require to be made in the manual. If the words "First Members" in this connection in paragraph four are given a hard, fixed and unchangeable meaning, then the trust must come to an end when First

Members are abolished as a part of the church. If "First Members" have been irrevocably established as an essential part of the machinery by which alone the trust can be carried out, and if for any reason that machinery breaks down or becomes incapable of operation, then the trust itself would fall. *Bullard v. Shirley*, 153 Mass. 559, 560. *Teele v. Bishop of Derry*, 168 Mass. 341, 342. Such a result ought not to be reached except for most compelling reasons, after the trust has been established and executed for so many years. No such compelling reasons are found in this record. The plain intent of the founder of the trust is that the net income must be used to promote the religion of Christian Science as taught by Mrs. Eddy even though First Members may pass out of existence. The conclusion is unescapable that in this connection the words "First Members" had no hard and fast meaning, but were used in a broad sense to designate a body connected with and forming a part of that church, and to comprehend whatever body might from time to time exercise in accordance with the ecclesiastical laws of the Christian Science denomination the functions then exercised by First Members. Since the First Members have been abolished and all their powers transferred to the board of directors, it must follow that the directors are authorized to exercise the functions vested in First Members under paragraph four of the trust deed.

The meaning of the words "First Members" in this connection is a significant aid in determining the meaning of the same words upon their second occurrence in paragraph ten of the trust deed. It is a well recognized principle of interpretation that the same words used in different places in the same instrument commonly have the same meaning and effect unless another meaning is demanded by the context. *Hall v. Hall*, 209 Mass. 350, 353. *Attorney General v. Armstrong*, 231 Mass. 196, 211. *Raymer v. Commissioner of Corporations*, ante.

The second occurrence of the words "First Members" in the trust deed is in paragraph ten. The sentence there is "The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient." The precise point is whether the power of removal is gone if there are no longer any First Members. Although the trustees under the trust deed were given extensive powers concerning the publication of the so-called literature of the church, nevertheless they were not the final arbiters concerning these matters, because they might be removed from office by other church authorities "for such reasons" as to such other church authorities "may seem expedient." The soundness of the reasons for such removal is not

made subject to review or revision by any other church tribunal, body or officer. The expediency of the reasons moving to that action are left by the deed wholly to the church authorities therein named. No discussion is needed to demonstrate that this power of removal was comprehensive, drastic and final. It is an important feature of the trust deed.

The power of removal of a trustee according to the trust deed was vested in "the First Members together with the directors of said Church." These are ecclesiastical terms. They describe authorities of The First Church of Christ, Scientist, in Boston as they were then constituted and established. Mrs. Eddy was the founder of that church. She was its pastor emeritus. It is manifest that so long as she lived the polity of that church might be modified or changed. Membership in the church, classification of members, voting rights, and officers, might be altered. Existing boards might be abolished and others created. The executive and disciplinary powers of the church, its officers and members, might be divided, consolidated and redistributed. They might be vested in one or several boards, officers or bodies. Of course the terms of the trust deed cannot be varied, but its words are to be interpreted with reference to the subject matter to which they relate. It seems manifest to us that all parties to the trust deed used the words "First Members" and "directors" in paragraph ten of the trust deed with the significance, which they had acquired in Christian Science usage, and with the knowledge that, according to the practices of that church, duties imposed on them might be shifted to others connected with the church. Those words comprehended at the time they were used all those possessed of authority to control the affairs of the church. They were used in a generic sense. They included such authorities even though their number and descriptive titles might change. The First Members did not include all members of the church. Those who united with the church by admission did not thereby become First Members. The First Members were those who were made such at the meeting for the organization of "The First Church of Christ Scientist" and those who subsequently were by these First Members voted into their fellowship. First Members alone possessed voting power. The church was in its infancy as a religious sect. Its founder was active. The deed of January 25, 1898, is itself evidence of a hope and expectation of growth of the church and of the sect. It is a familiar principle of legislation, illustrated by numerous statutes, that one board, commission or other body may be abolished and its powers and duties

transferred to other and succeeding officers. No doubt has been raised concerning the validity of such statutes. Ecclesiastical denominations have like power as to the establishment of their officials, the description of their duties, the limits of their authority and the modification and alteration of these matters according to their own system of government. The conditions attendant upon the execution of the deed of January 25, 1898, indicate that its words "First Members together with the directors of said Church" were not used by the parties to the deed with the purpose of fixing inflexibly the persons or boards bearing those names in the church organization as alone capable of exercising power of removal of trustees. Thus to construe the words would be to stick to the form and to ignore the substance. The fair interpretation of the words is that those possessing the ecclesiastical functions at the time vested in First Members and directors should be the depositaries of the power of removal by whatever names they might be called, and however their number might fluctuate according to the polity of the church. In a more complete and accurate drafting of the deed of January 25, 1898, this might have been set forth in appropriate language. It is implied under all the circumstances from the words used. The intent of the parties to the trust deed as declared by the words used was not that the body known as First Members must be kept alive for all time in order that the power of removal of a trustee should continue, if at any time in the government of the church and in accordance with its practices it should be deemed wise to abolish First Members and transfer their duties to others. If such members should cease to exist under the church organization, the power of removal of a trustee would not thereby be extinguished. The parties to the instrument here in question were the founder of a sect of Christianity and three of her followers. The dominating purpose of the instrument was to promote and propagate the interests of that religious sect. As ancillary to that general object, power of removal of the trustees created by that instrument was established. It was vested in two constituent bodies of "The First Church of Christ Scientist," then organized and existing. The power of removal of the trustees was an essential part of the trust deed. The promotion of Christian Science as taught by Mrs. Eddy was the end and aim of the trust. To that regnant design all other provisions, not in themselves made fixed and unchangeable, must yield. Christian Science as thus taught was disclosed by the writings of the founder. The ecclesiastical organization established by her for the teaching and dissemi-

nation of Christian Science was "The First Church of Christ Scientist." She did not reserve to herself the power of removal of the trustees but she reposed that authority in First Members and directors of that church. That church was the beneficiary of the trust. That church as shown by the manual at the time of the execution of the trust deed of January 25, 1898, was the dominant church in Christian Science. It was the beneficiary of all net profits arising from the management of that trust. Its board of directors was clothed with extensive powers concerning its management. Its manual appears to be a vital part of Christian Science. The presumption is inevitable that all the parties to the trust deed of January 25, 1898, intended that the power of removal should be vested in the responsible representatives of The First Church of Christ Scientist, however they might be described or denominated, provided they succeeded to the powers and exercised the functions of First Members and directors. The inference is irresistible that they had in mind the mutability of the names and functions of church officers and intended that the power of removal should vest in such representatives of The First Church of Christ Scientist as might from time to time exercise according to the government of that church the functions and possess the powers of those named in the trust deed as having the power of removal. The vote of the First Members of January 10, 1901, embodied in a by-law to the effect that the business of the church hitherto transacted by them be done in the future by the directors, was not an attempt to delegate the trust power to participate in the removal of a trustee vested in them by the deed of January 25, 1898. It did not stand alone. It was a part of a large transaction. It was one step in the process of change according to the polity of the church whereby First Members were abolished and their duties and authorities vested in the directors.

The number of First Members of the church on January 25, 1898, when the trust deed was executed, is not disclosed in the record. It is, however, fairly inferable that they were numerous, and liable to constant fluctuation by reason of death and election of new members. Therefore, Mrs. Eddy could not have placed special confidence in their discretion as individuals. The principle that, when the element of personal choice is found, the exercise of the power must be confined to the person or persons selected and is not transmissible has no application. *Sells v. Delgado*, 186 Mass. 25, 27. The naming of directors and first members in paragraph ten of the trust deed as

having power of removal was not an appointment of particular persons as repositories of authority but a designation of two classes of church functionaries in whom the power was to vest and survive, no matter who the individuals might be. The power conferred upon these two classes of church functionaries "to declare vacancies for such reasons as to them may seem expedient" imposed a continuing duty to maintain a certain intimacy of knowledge as to the work of the trustees in order to be able constantly to act intelligently. It was a power coupled with a trust. The obligation rested upon them to cause the provisions of the trust deed to be executed in accordance with its terms and the intent and purpose of the donor there expressed to be administered faithfully. This duty was given to the donees of the power by virtue of their respective positions in the church. In a sense this position was kindred to that of trustees clothed with a power coupled with an interest in the survivors of whom the authority continues for the purpose of effectuating the object of the power. *Gould v. Mather*, 104 Mass. 283, 286. *Parker v. Sears*, 117 Mass. 513. *Chandler v. Rider*, 102 Mass. 268. *Coffin v. Attorney-General*, 231 Mass. 579. *Wilson v. Snow*, 228 U. S. 217.

These circumstances distinguish the case at bar from *Boston v. Doyle*, 184 Mass. 373. In that case the holders of certain public offices had been designated in a trust instrument as members of a board of managers of a trust fund, and the offices thereafter were abolished and other offices created whose incumbents succeeded in most particulars to the same public duties. It was held that it became the duty of the court to appoint managers to take the places of those holding the original offices and designated by the donor as the board of managers.

The report of the master shows that the First Members have been disbanded according to the forms of church organization and government prevailing in "The First Church of Christ, Scientist." They are no longer in existence. They ceased to have any temporal power in 1901, and were disbanded in 1908. The means by which this was accomplished are not of consequence further than to know that they were those recognized, adopted and approved without dissent by the ecclesiastical body known as The First Church of Christ, Scientist. That result has been accepted by all Christian Scientists. It had the approval of Mrs. Eddy if it was not suggested by her. It has been embodied in every edition of the Church Manual since 1908. It would be difficult to conceive more convincing proof that the church as an organization had abolished First Members and conferred their powers, at least so far as related to removal of trustees, upon the directors. Votes and by-laws to that end were accepted with entire unanimity at the time and

there has been unbroken acquiescence in their regularity for many years. The First Members have not become incapable of participation in the exercise of the power of removal of trustees merely as the result of their own act. The governing power of the church at the suggestion or with the approval of Mrs. Eddy has brought about their elimination in connection with removals because substantially all their power has been transferred to the directors. That has been accomplished by ecclesiastical methods accepted without question by all the church. It is a matter as to which the action of the church according to its rules is final. So far as concerns the power of removal of a trustee under the trust deed of January 25, 1898, the organization of the church in accordance with its polity has consolidated those powers, previously shared by the First Members and the directors in concurrence, and placed them wholly in the directors. Interpreting the words of the trust deed according to their true meaning, we are of opinion that the power of removal thereby survived and became vested in the board of directors. It exists in them by virtue of their office and the trust reposed in them by the deed of January 25, 1898, and the duties placed upon them by the church itself. *Carter v. Papineau*, 222 Mass. 464. *Attorney General v. Armstrong*, 231 Mass. 196.

The board of directors as those words are used in the trust deed of January 25, 1898, do not in our opinion refer to the board established by the deed of September 1, 1892, but to the officers constituting the ecclesiastical board of directors under the polity of the church. The reasons already stated respecting First Members lead to this conclusion. No reference to the deed of September 1, 1892, is found in the trust deed of January 25, 1898. The latter deed throughout relates to those connected with The First Church of Christ Scientist either as First Members or directors. These terms are ecclesiastical. When therefore the board of directors under the practice of the church was increased in membership, it became vested with powers formerly exercised by the four directors, so far as concerns the power of removal in the trust deed of January 25, 1898. It is unnecessary to determine in this connection whether the board of directors constituted a corporation or not. For the purpose of this decision the finding of the master that they never became a corporation is accepted.

The result is that the board of five directors have the power, if they act in accordance with law and with the terms of the trust deed of January 25, 1898, to effect the removal of a trustee under that deed.

The conclusion that the power of removal of a trustee is now vested in the board of five directors is contrary to that of the master, but it is in substance and effect the application

of different legal principles to the facts found by the master. The facts found by him are accepted in their entirety. The result which has been stated follows in law from those facts.

One being absent and one refusing to vote, the three remaining directors adopted a resolution removing the plaintiff Rowlands from his position as one of the trustees under the deed of January 25, 1898. This resolution is somewhat long and recites numerous reasons. One of these is that Rowlands "evidently has other interests which prevent him from giving sufficient time and attention to the business of the Christian Science Publishing Society." Respecting this the master was "unable to regard the charge made as one actually believed to be true, by the directors who made it, after due inquiry into the facts, or as one which they would have considered sufficient for his removal if they had not desired to remove him for other reasons." The other reasons assigned in the resolution of removal grew out of a controversy, arising some years after the death of Mrs. Eddy, between the trustees and directors regarding the extent to which the former were subject to the control and supervision of the latter. Seemingly the controversy started because the directors requested that a pamphlet called "Purification" be not sent out until authorized by them. Nevertheless the business manager sent out the pamphlets on the ground that it was "his highest understanding of Principle to follow the original order of the Trustees" to that effect notwithstanding the request of the directors. Then the controversy widened into a general discussion of the respective powers and duties of the two boards under the deed of trust of January 25, 1898, and under the Church Manual. The controversy appears to have centered about the meaning of certain sections of the Church Manual and the extent to which its provisions authorized the directors to supervise the matter to be printed and sent out by the trustees, and to what extent the trustees were required to heed the provisions of the Church Manual. Into the details of that controversy, it is not necessary to enter. Out of it has grown the present litigation. The finding of the master is that "I am unable to hold either that the final authority claimed by the directors is so clearly established by the deed itself and the provisions of the Manual that no reasonable denial of it was possible—or that the Directors' determination that they had such final authority was conclusive upon the trustees. Whatever the right conclusion may be upon the question whether such final authority belonged to the Directors or not, it was by no means a question regarding which no honest difference of opinion was possible." This is another way of saying that an honest difference of opinion was pos-

sible. Therefore if the directors were honest in their view, they cannot be said to be without authority to decide that it was expedient with reference to the welfare of the trust to remove one of the trustees.

The words of the trust deed are that vacancies in the trusteeship may be declared "for such reasons as to them may seem expedient." That is a broad phrase. Expediency is a word of large import. It comprehends whatever is suitable and appropriate in reason for the accomplishment of the specified object. In this connection it includes whatever may rationally be thought to conduce to the welfare of the trust. It means that the genuine judgment of the named church authorities honestly exercised is to prevail. The discretion of those possessing the power of removal, when applied in good faith, is not subject to re-examination in respect of its wisdom. The judgment of the court cannot be substituted for the discretion of the constituted authorities, when fairly exercised. Whether the decision be right or wrong is not for the courts to decide. The power of removal cannot be put forth maliciously, whimsically, or capriciously. The function of the court is to ascertain whether the terms of the deed of trust have been observed, whether the proceedings have been regular, whether the cause assigned is one sufficient to warrant removal, whether fair opportunity has been accorded the trustee to present his side of the matter so as to satisfy the requirements of natural justice, whether the decision is within the scope of the power conferred and whether the final action appears to have been in the exercise of good faith and an honest judgment or to have been arbitrary and lacking in the ordinary elements of fairness. *Proctor v. Heyer*, 122 Mass. 525, 529. *Grosvenor v. United Society of Believers*, 113 Mass. 78, 91. *Leverett v. Barnwell*, 214 Mass. 105, 108. *Richards v. Morison*, 229 Mass. 458, 461. This does not necessarily imply that a formal hearing must be had before removal. *O'Dowd v. Boston*, 149 Mass. 443. *Attorney General v. Donahue*, 169 Mass. 18, 22. *Sims v. Police Commissioner*, 193 Mass. 547, 549. Circumstances may be conceived to exist, which would render a hearing futile. Nevertheless a hearing ordinarily is important to the decision of such a question. *Burgess v. Mayor & Aldermen of Brockton*, 235 Mass. 95, and cases collected at page 100. *Smyth v. Phillips Academy*, 154 Mass. 551, 557. *Gray v. Christian Society*, 137 Mass. 329, 331.

It hardly can be held to be a capricious or arbitrary exercise of power for the directors to determine that, because a radical difference of opinion as to the interpretation of the Church Manual existed between them and the trustees, the welfare of the trust required the removal of one of

the trustees. It is not for us to pass upon the wisdom of such action. The only question is whether it was arbitrary and capricious and not in good faith. One of the grounds stated in the resolution of removal was that Mr. Rowlands did not recognize the importance of "promoting the interests of Christian Science by following the directions given by Mrs. Eddy in our Church By Laws" and had shown a disposition to pervert their meaning and annul their effect.

Respecting the good faith of the directors in this matter, the master finds that "So far as the assigned reasons accuse Rowlands of failure to devote time enough to the Publishing Society's business, or were made to appear as reasons requiring his removal only, and not equally the removal of his co-trustees, it may be said that they were not reasons assigned in good faith. But that the Directors who adopted the resolution honestly believed themselves to be exercising a power belonging to them, and for sufficient reasons whether those assigned or not, I find no reason to doubt." The directors cannot be said to have acted arbitrarily or capriciously in removing one only of the trustees, because the same grounds appear to have existed for removing all the trustees. Sound judgment may have dictated the removal of one, and not all. The last sentence of this finding to the effect that the directors honestly believed they were acting within their power and honestly believed their reasons to be sufficient is inconsistent with bad faith or fraud in its common acceptation. This is a finding of good faith on the part of the directors as to all the reasons stated except the one for failure to devote time enough to the business. It is not a finding that the other reasons given were tainted or affected by the one as to failure of Mr. Rowlands to devote time enough to the business. Those other reasons honestly assigned were such as, within the power vested in the directors, warranted them in making a removal. It is their honest judgment upon the question of expediency in this regard which must prevail and not that of any other body or magistrate.

The circumstance that no formal hearing was held is not decisive against the validity of the removal. While ordinarily one, whose conduct is called in question, ought to be given an opportunity to be heard in his own defense, it is apparent that the long controversy between the trustees and the directors had brought out clearly the points of difference between them. The grounds of removal, on which the action of the directors can stand, had been in substance fully debated orally and in writing and Mr. Rowlands had stated his point of view forcibly and at length.

A majority of the directors were present at the meeting and voted for the removal. That was sufficient in

form to effect a removal. A unanimous vote was not required. The result is that upon the application of the principles of the law to the facts found by the master the removal of Mr. Rowlands as one of the trustees was effected.

While this case was pending before the single justice the Attorney General filed a petition for leave to intervene and to file an answer. That was denied. No exceptions were saved. No appeal was taken. Before the full court the Attorney General has filed a suggestion that the court is without jurisdiction to determine the issues raised on this record or to enter a final decree on the ground that the suit relates to a public charitable trust or trusts and that the Attorney General as the representative of the public beneficiaries is a party essential to jurisdiction over the subject. The point thus presented is not whether the Attorney General may be a proper party or whether in the exercise of the judicial discretion he ought to be permitted to become a party. Those questions were raised by his petition to intervene and, having been decided adversely to his contention without reservation of any right of review, cannot now be considered.

The court has taken jurisdiction of numerous cases, indistinguishable in this particular from the case at bar, to which the Attorney General was not a party. *Carey v. Bliss*, 151 Mass. 364. *Morville v. Fowle*, 144 Mass. 109. *Teele v. Bishop of Derry*, 168 Mass. 341. *Worcester Missionary Society v. Memorial Church*, 186 Mass. 531. *Codman v. Brigham*, 187 Mass. 309. *Hubbard v. Worcester Art Museum*, 194 Mass. 280. *Ware v. Fitchburg*, 200 Mass. 61. *Crawford v. Nies*, 220 Mass. 61. *S. C. 224 Mass. 474*. *First African Association v. Worthy*, 232 Mass. 331. It is the duty of the court of its own motion to examine its jurisdiction before proceeding to any decision. *Eaton v. Eaton*, 233 Mass. 351, 364 and authorities there collected. It is hardly to be thought that so many cases arising over so long a period of time could have been decided inadvertently. These adjudications without joining the Attorney General as a party are almost conclusive of the jurisdiction of the court even though the point has not been discussed.

The issue here to be settled (as has been already stated) is whether one of the trustees under the deed of January 25, 1898, can be and has been removed by the directors. The public interests must be directly and essentially, rather than remotely and accidentally involved as to some distinct issue in order to prevent the cause from proceeding to a decision without the presence of the Attorney General as a party. *Jackson v. Phillips*, 14 Allen, 539, 579. *McKenzie v. Presbytery of Jersey City*, 67 N. J. Eq. 625, 683 to 686. *Esquimalt and Nanaimo Railway v. Wilson*, 1920 A. C. 358.

Whether the power of removal of

one of the trustees has been exercised according to law is a matter of direct interest to the parties to the present proceeding. The absence of the Attorney General does not affect the jurisdiction of the court to proceed to a final determination on the merits of the issues raised between the immediate parties. Such decision will not directly pass upon interests of which the Attorney General in his official capacity is the representative.

No question is involved in this suggestion of the Attorney General either under the Constitution of this Commonwealth or under the Fourteenth Amendment to the federal Constitution. Cases like *Riverside Mills v. Menefee*, 237 U. S. 189 and *McDonald v. Mabee*, 243 U. S. 90 plainly depend upon a principle different from that here raised.

On April 6, 1920, after the filing of the master's report, Daisy L. Krauthoff and Edwin A. Krauthoff petitioned, in behalf of themselves and such other members of "The First Church of Christ Scientist" as might elect to come in, for leave to file exceptions to the master's report, a motion to recommit to the master and a motion to postpone. They sought to except to the report on objections filed but omitted from exceptions by the defendants. A decree was entered denying this petition and the petitioners claimed an appeal. The petitioners were not parties to the proceeding and therefore had no

standing to present such a motion. The master's report was filed March 6, 1920. The time allowed by equity rules 31 and 32 for filing exceptions thereto had expired. *Smedley v. Johnson*, 196 Mass. 316. They had no right to appeal from the denial of their motion. *Martin v. Tapley*, 119 Mass. 116. *Ex parte Leaf Tobacco Board of Trade*, 222 U. S. 578.

On October 20, 1920, which was about two months after the reservation of the case for decision by the full court, Mr. and Mrs. Krauthoff filed a motion in behalf of themselves and such other members of the church as might desire to join, to be admitted as parties to the suit and to refile the motions before filed and denied. There was no error in the denial of this motion. The case was pending before the full court. The single justice could not then deal with such questions. *Burbank v. Farnham*, 220 Mass. 514, 515, 516. *Old Dominion Copper Mining & Smelting Co. v. Bigelow*, 203 Mass. 159, 221. The motion also was addressed under the circumstances disclosed on the record to the discretion of the court, which cannot be held to have been abused. *New York Bank Note Co. v. Kidder Press Manuf. Co.* 192 Mass. 391, 408. *Credits Commutation Co. v. United States*, 177 U. S. 311, 314 to 317. *Opinion by Lurton Circuit Judge in Toler v. Tennessee, Virginia & Georgia Railway*, 67 Fed. 168, 172. *City of New York v. Consolidated Gas*

Co. 253 U. S. 219. There appears to have been no adversary relation between the petitioners and the directors. It was the duty of the latter to protect the interests of the members of "The First Church of Christ Scientist." *John Hancock Mutual Life Ins. Co. v. Lester*, 234 Mass. 559-562.

The result is that the exceptions of the defendants to the master's report so far as they relate to his rulings that the directors had no power under the deed of January 25, 1898, to remove a trustee and that the removal of Mr. Rowlands was ineffectual must be sustained. On the facts found by the master, in the light of the principles of law here found to be controlling the plaintiffs cannot maintain their bill.

In order to decide the fundamental issues raised on this record, it is unnecessary to consider the question whether Mr. Dittamore or Mrs. Knott is a director. That issue is directly involved in another suit.

The exceptions of Emelie B. Hulin have been waived and need not be considered.

Suggestion of the Attorney General denied.

Both appeals of Mr. and Mrs. Krauthoff dismissed.

Exceptions of Emelie B. Hulin waived.

Bill dismissed, November 23, 1921.

Statement

From the beginning we have sought only to conform to Mrs. Eddy's wish, faithfully to carry out the high purpose of her trust, and to obey the law of the land.

We differed from the Directors in our interpretation of what our Leader's wish and purpose were, and she could not speak to us in person.

We therefore sought legal interpretation of her legal instrument which declares our duty, and to that we were willing to subordinate our cherished beliefs. That interpretation has now been given. It is authoritative, and, as to us, final.

We shall cooperate with the Directors—who, as the law has been declared, are entitled to dominate the trust—in the appointment of our successors.

HERBERT W. EUSTACE,
LAMONT ROWLANDS,
PAUL HARVEY.

Boston, Massachusetts,
November 25th, 1921.

The Trustees have sent to the Christian Science Board of Directors the following letter:

November 25, 1921.

Christian Science Board of Directors,
The First Church of Christ, Scientist,
105 Falmouth Street,
Boston, Massachusetts.

Dear Friends:

We inclose herewith for your information a copy of a statement which will appear in the Monitor tomorrow morning. We trust we shall be able to cooperate with you in the appointment of our successors.

We beg to inform you also that we have received the resignations of Mr. Frederick Dixon as Editor and Mr. John R. Watts as Business Manager. They inform us, however, that their services will be available until their successors may be conveniently installed.

With best wishes.

Very sincerely yours,

HERBERT W. EUSTACE,
LAMONT ROWLANDS,
PAUL HARVEY.



Photographic Reproduction

of the

Deed of Trust

January 25, 1898, by Mary Baker Eddy

Exhibit 5
Miss C. E. Burbank,
Official Stenographer,

JUN 4 1901

Mass. Superior Court,
First Suffolk Co. Session.

BE IT KNOWN THAT I, Mary Baker G. Eddy of Concord, New Hampshire, in consideration of one dollar to me paid by Edward P. Bates, James A. Neal, and William P. McKenzie, all of Boston, Massachusetts, and in consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed, and for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me, do hereby sell and convey to them, the said Bates, Neal and McKenzie, and their successors in the trust hereinafter established all and singular the personal property, goods, and chattels which were sold and conveyed to me by the Christian Science Publishing Society by its bill of sale dated January 21st, 1898, said property being located in the premises numbered 95 and 97 Falmouth Street in said Boston, including the publications called "The Christian Science Journal," (not including the copyrights thereof), the linotype, all pamphlets, tracts and other literature conveyed to me by said bill of sale, the Hymnal, the subscription lists of "The Christian Science Journal" and of "The Christian Science Quarterly," all stationary fixtures, stock on hand manufactured or otherwise, machinery, tools, mailing lists, book accounts, notes, drafts, checks and bills, whether in process of collection or not, five United States bonds of one thousand dollars each, all cash and bank accounts and all personal property of whatsoever kind or nature

which belonged to said Society and which were conveyed to me as aforesaid, excepting only such of said property as may have been used and disposed of since the date of said sale to me, upon the following perpetual and irrevocable trust and confidence, namely:

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

2. The business shall be done by said trustees under the unincorporated name of "The Christian Science Publishing Society."

3. Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them.

4. Said trustees shall keep accurate books of account of all the business done by them, and shall deposit in a responsible and reliable Bank or Trust Company all bonds, mortgages, deeds, and other documents or writings obligatory of every kind and nature for safe keeping; also all surplus funds over and above the sum necessary to defray the running expenses of the business, until the same shall

be paid over to the Church Treasurer, as herein provided. No papers or monies shall be taken from said Bank or Trust Company excepting by and in the presence of a majority of said Trustees. Once in every six months the trustees shall account for and pay over to the treasurer of "The First Church of Christ, Scientist, in Boston, Mass.," the entire net profits of said business. The "net profits" shall be understood to mean the balance remaining at the end of each six months after paying the usual and legitimate expenses ~~reasonably~~ incurred in conducting the business. No authority is intended to be conferred upon the trustees to expend the money of the trust for property not ~~reasonably~~ necessary for the immediate successful prosecution of the business, or to invest the same for purposes of speculation, or to incur liabilities beyond their ability to liquidate promptly from the current income of the business. Said treasurer shall hold the money so paid over to him subject to the order of "The First Members" of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church.

5. The business manager shall present to the Trustees, at the end of each month, a full and correct statement of the receipts and expenditures of the month.

6. Said Trustees shall employ all the help necessary to the proper conduct of said business, and shall

discharge the same in their discretion or according to the needs of the business, excepting that the business manager may call in at times of necessity such temporary help as will facilitate the business.

7. The Trustees shall employ such number of persons as they may deem necessary to prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches, the same to be published Quarterly as has heretofore been done by and in the name of the Christian Science Quarterly; and they may, in their discretion, change the name or style of such Quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected.

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

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

10. Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; *but if I do not elect to exercise this right* ~~and on and after my decease~~, the remaining trustees

shall fill said vacancy. The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.

11. I also reserve the right to withdraw from said trust, if I shall so desire, the publication of the Christian Science Journal, but if I do not exercise this reserved option, then said Journal shall remain a part of the trust property forever.

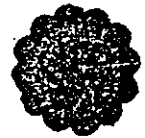
12. Upon my decease, in consideration aforesaid, I sell and convey to said trustees my copyright of "The Christian Science Journal," to be held by them as the other property of said trust.

13. Said trustees shall each receive annually one thousand dollars for their services in that capacity, payable semi-annually in payments of five hundred dollars, *or such salary as the said trustee may determine from time to time.*

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

WITNESS my hand and seal at Concord New Hampshire, this *twenty fifth* day of January, 1898.

Mary Baker G. Eddy



We accept the foregoing Trust

January 25th 1898. { Edward P. Bates.
James A. Neal
Wm P. McKenzie

September 8th, 1898	Thomas W. Hatten	Succeeding Edward P. Bates, Resign
October 21st, 1898	Joseph B. Clark	" James A. Neal
September 25th, 1906	Allison N. Stewart	" Joseph B. Clark, Deceas
January 6th, 1906	William D. McCrackan	" Allison N. Stewart, Resign
June 19th, 1906	Clifford P. Smith	" William D. McCrackan, "
September 12th, 1911	James G. Neal	" Clifford P. Smith
December 2nd, 1912	Herbert W. Custer	" James G. Neal
February 1st, 1917	Edward A. Merritt	" Thomas W. Hatten
August 1, 1917,	David B. Ogden	" Wm P. McKenzie
August 1, 1917,	James Hayward	" Edward A. Merritt

City of Boston, October 7, 1918: 3:42 min. P. M. Received and entered in Records of Mortgages, Book 1313, Page 221 per

BOSTON, MASS.

OCT 7 3-28 PM 1918
RECEIVED
CITY CLERK'S OFFICE

Anna D. Mann
City Clerk.

July 5, 1921, Paul Hawry..... Succeeding David B. Ogden Resign

Deed of Trust

The following is a copy of the Deed of Trust given by Mary Baker Eddy January 25, 1898, constituting the Board of Trustees, organizing The Christian Science Publishing Society.

BE IT KNOWN THAT I, Mary Baker G. Eddy of Concord, New Hampshire, in consideration of one dollar to me paid by Edward P. Bates, James A. Neal, and William P. McKenzie, all of Boston, Massachusetts, and in consideration of their agreement to faithfully observe and perform all the conditions hereinafter specified to be by them observed and performed, and for the purpose of more effectually promoting and extending the religion of Christian Science as taught by me, do hereby sell and convey to them, the said Bates, Neal and McKenzie, and their successors in the trust hereinafter established all and singular the personal property, goods, and chattels which were sold and conveyed to me by the Christian Science Publishing Society by its bill of sale dated January 21st, 1898, said property being located in the premises numbered 95 and 97 Falmouth street in said Boston, including the publication called "The Christian Science Journal," (not including the copyrights thereof), the linotype, all pamphlets, tracts, and other literature conveyed to me by said bill of sale, the Hymnal, the subscription lists of "The Christian Science Quarterly" and of "The Christian Science Journal," all stationary fixtures, stock on hand manufactured or otherwise, machinery, tools, mailing lists, book accounts, notes, drafts, checks and bills, whether in process of collection or not, five United States bonds of one thousand dollars each, all cash and bank accounts and all personal property of whatsoever kind or nature which belonged to said Society and which were conveyed to me as aforesaid, excepting only such of said property as may have been used and disposed of since the date of said sale to me, upon the following perpetual and irrevocable trust and confidence, namely:

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

2. The business shall be done by

said trustees under the unincorporated name of "The Christian Science Publishing Society."

3. Said trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, and without consulting me about details, subject only to my supervision, if I shall at any time elect to advise or direct them.

4. Said trustees shall keep accurate books of account of all the business done by them, and shall deposit in a responsible and reliable Bank or Trust Company all bonds, mortgages, deeds, and other documents or writings obligatory of every kind and nature for safe keeping; also all surplus funds over and above the sum necessary to defray the running expenses of the business, until the same shall be paid over to the Church Treasurer, as herein provided. No papers or monies shall be taken from said Bank or Trust Company excepting by and in the presence of a majority of said Trustees. Once in every six months the trustees shall account for and pay over to the treasurer of "The First Church of Christ, Scientist, in Boston, Mass.," the entire net profits of said business. The "net profits" shall be understood to mean the balance remaining at the end of each six months after paying the usual and legitimate expenses incurred in conducting the business. No authority is intended to be conferred upon the trustees to expend the money of the trust for property not necessary for the immediate successful prosecution of the business, or to invest the same for purpose of speculation, or to incur liabilities beyond their ability to liquidate promptly from the current income of the business. Said treasurer shall hold the money so paid over to him subject to the order of "The First Members" of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church.

5. The business manager shall present to the Trustees, at the end of each month, a full and correct statement of the receipts and expenditures of the month.

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

temporary help as will facilitate the business.

7. The Trustees shall employ such number of persons as they may deem necessary to prepare Bible Lessons or Lesson Sermons to be read in the Christian Science churches, the same to be published Quarterly as has heretofore been done by and in the name of the Christian Science Quarterly; and they may, in their discretion, change the name or style of such Quarterly publication as occasion may demand. They shall also fix the compensation of the persons so selected.

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

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

10. Whenever a vacancy shall occur in said trusteeship for any cause, I reserve the right to fill the same by appointment, if I shall so desire, so long as I may live; but if I do not elect to exercise this right, the remaining trustees shall fill said vacancy. The First Members together with the directors of said Church shall have the power to declare vacancies in said trusteeship for such reasons as to them may seem expedient.

11. I also reserve the right to withdraw from said trust, if I shall so desire, the publication of the Christian Science Journal, but if I do not exercise this reserved option, then said Journal shall remain a part of the trust property forever.

12. Upon my decease, in consideration aforesaid, I sell and convey to said trustees my copyright of "The Christian Science Journal," to be held by them as the other property of said trust.

13. Said trustees shall each receive annually one thousand dollars for their services in that capacity, payable semiannually in payments of five hundred dollars, or such salary as the

said Church may determine from time to time.

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

WITNESS my hand and seal at Concord, New Hampshire, this twenty-fifth day of January, 1898.

(Signed)

MARY BAKER G. EDDY. [Seal]

We accept the foregoing Trust.

(Signed)

EDWARD P. BATES,
JAMES A. NEAL,
WM. P. MCKENZIE.

January 25th, 1898.

September 8th, 1898, (Signed) Thomas W. Hatten, Succeeding Edward P. Bates, Resigned.

October 21st, 1898, Joseph B. Clark, Succeeding James A. Neal, Resigned.

September 25th, 1906, (Signed) Allison V. Stewart, Succeeding Joseph B. Clark, Deceased.

January 6th, 1908, (Signed) William D. McCrackan, Succeeding Allison V. Stewart, Resigned.

June 19th, 1908, (Signed) Clifford P. Smith, Succeeding William D. McCrackan, Resigned.

September 12th, 1911, (Signed) James A. Neal, Succeeding Clifford P. Smith, Resigned.

December 2d, 1912, (Signed) Herbert W. Eustace, Succeeding James A. Neal, Resigned.

February 1st, 1917, (Signed) Edward A. Merritt, Succeeding Thomas W. Hatten, Resigned.

August 1st, 1917, (Signed) David B. Ogden, Succeeding William P. McKenzie, Resigned.

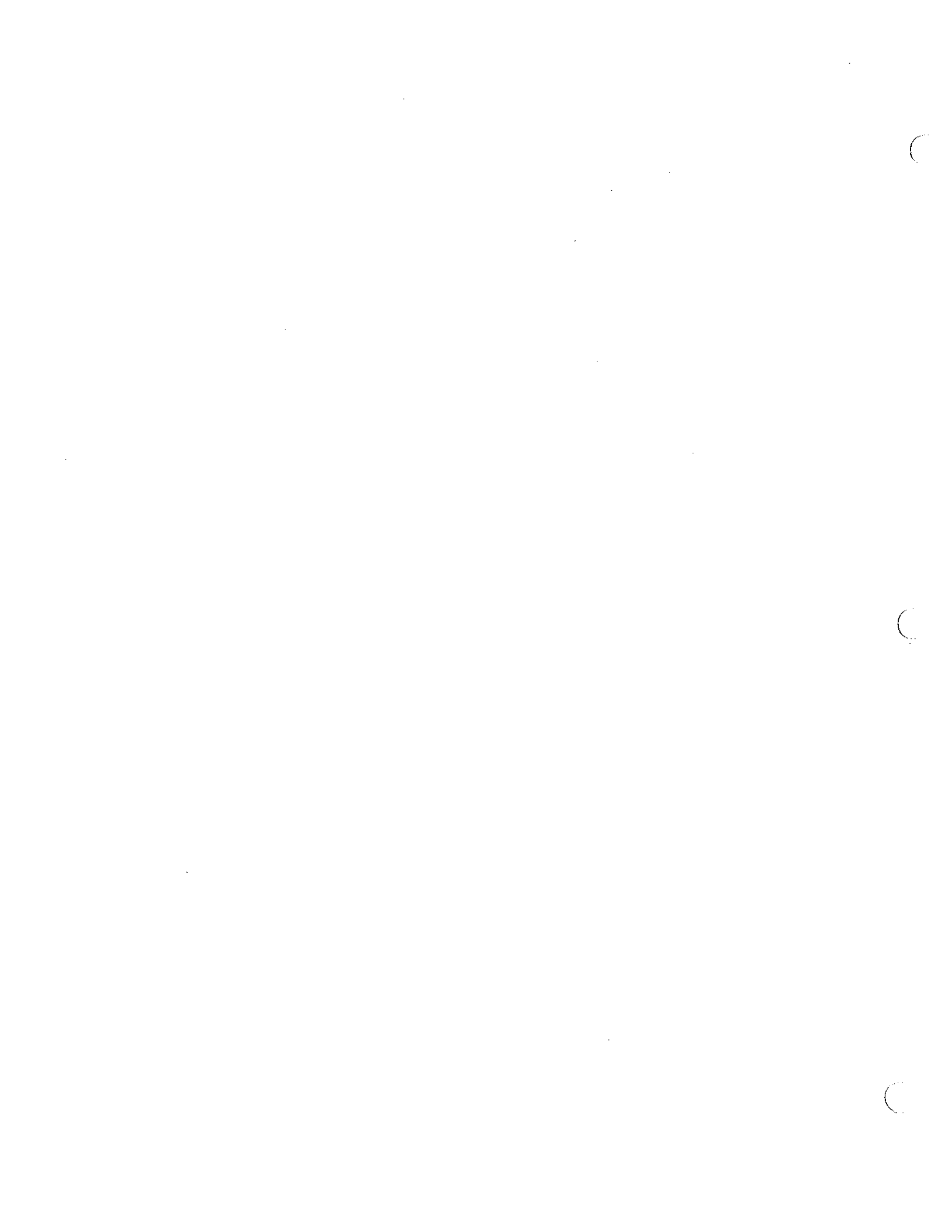
August 1st, 1917, (Signed) Lamont Rowlands, Succeeding Edward A. Merritt, Resigned.

City of Boston, October 7, 1918, 3 & 28 min. P. M. Received and entered in Records of Mortgages, Book 1313, page 221.

per
JAMES DONOVAN
City Clerk

Received City Clerk's Office, Oct. 7 3-28 PM 1918, Boston, Mass.

July 5th, 1921, (Signed) Paul Harvey, Succeeding David B. Ogden, Resigned.



New Bill in Equity

BOSTON, Massachusetts—A new bill in equity was filed in the Supreme Judicial Court for the Commonwealth of Massachusetts, on April 12, by The First Church of Christ, Scientist, et al. v. Herbert W. Eustace et al. A copy of this bill was furnished to The Christian Science Monitor for publication Wednesday, April 14, 1920, and appears below.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court
In Equity

The First Church of Christ, Scientist, in Boston, Massachusetts, Adam H. Dickey, of Cohasset in the County of Plymouth, James A. Neal of Brookline in the County of Norfolk, Edward A. Merritt of Concord in the County of Middlesex, William R. Rathvon and Annie M. Knott, both of Boston in the County of Suffolk, as they are the Christian Science Board of Directors, the Directors of said The First Church of Christ, Scientist, in Boston, Mass.; and Edward L. Ripley of Boston in the County of Suffolk, as he is Treasurer of said The First Church of Christ, Scientist, in Boston, Mass.

V.

Herbert W. Eustace of Boston in the County of Suffolk, David B. Ogden of Brookline in the County of Norfolk and Lamont Rowlands of Picayune in the State of Mississippi, acting as Trustees of The Christian Science Publishing Society under a deed of trust dated January 25, 1898.

Defendants

BILL OF COMPLAINT

1. The plaintiff, The First Church of Christ, Scientist, in Boston, Massachusetts, is a voluntary religious society located in Boston, in the County of Suffolk, and for the purposes of this suit is a corporation by virtue of Revised Laws, Chapter 37, Section 12, and Chapter 132, of the Special Acts of 1917, and is otherwise known and referred to hereinafter as The Mother Church; and said The First Church of Christ, Scientist, is the sole financial beneficiary under the trust deed hereinafter mentioned.

The plaintiffs Dickey, Neal, Merritt, Rathvon, and Knott are the members of the Christian Science Board of Directors, the Directors of said The First Church of Christ, Scientist, and are charged with the transaction of the business of said Church by virtue of the by-laws thereof contained in the Church Manual, a copy whereof

is hereto annexed marked Exhibit "A." The plaintiff Edward L. Ripley is the duly elected, qualified and acting Treasurer of said The First Church of Christ, Scientist.

2. The defendants Eustace, Ogden, and Rowlands are acting as Trustees of The Christian Science Publishing Society under an instrument dated January 25, 1898, a copy whereof is hereto annexed marked Exhibit "B".

3. On January 25, 1898, Mary Baker Eddy executed a deed of trust, Exhibit B, by which she conveyed to certain Trustees and their successors in trust certain personal property as therein described upon the trusts therein established, to hold and manage said property and property rights exclusively for carrying on the business therein mentioned in promoting the interests of Christian Science. By said deed Mrs. Eddy provided that the Trustees thereunder should energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility, without consulting her about details, but reserved to herself the right to make such changes as she might think important and to supervise the management of the business if she should at any time elect to advise or direct the Trustees thereunder, and provided that said Trustees and their successors in trust should not be eligible to said trusteeship, or to continue in the same, unless they were loyal, faithful and consistent believers and advocates of the principles of Christian Science as taught by her in her book "Science and Health with Key to the Scriptures". Mrs. Eddy also provided in said deed that the Trustees thereunder should keep accurate books of account of all the business done by them and should deposit in a responsible and reliable bank or trust company all bonds, mortgages, deeds and other documents or writings obligatory of every kind and nature for safe keeping; also all surplus funds over and above the sum necessary to defray running expenses of the business until the same should be paid over to the Treasurer of said Church. By said deed she also provided that no papers or monies should be taken from said bank or trust company excepting by and in the presence of a majority of said Trustees; and that once in every six months the Trustees should account for and pay over to the Treasurer of said "The First Church of Christ, Scientist, in Boston, Massachusetts", the entire net profits of said business. The term "net profits"

was, by said trust deed, defined to mean the balance remaining at the end of each six months after paying the usual and legitimate expenses incurred in conducting the business; and it was further provided that no authority is intended to be conferred upon the Trustees to expend the money of the trust for property not necessary for the immediate successful prosecution of the business, or to invest the same for purpose of speculation, or to incur liabilities beyond their ability to liquidate promptly from the current income of the business.

4. At or about the date of the execution of said trust deed and from time to time subsequent thereto the donor, Mrs. Eddy, by means of by-laws contained in the Church Manual made provisions for the supervision of the business conducted by the Trustees under said trust deed and directed said Trustees in the management of said business likewise by means of such by-laws, originated and approved by her as a part of the organic law and denominational government of said Church. Some of such directions are now contained in Article XXV, in Article VIII, Sections 11 and 14, and in Article I, Sections 6 and 7, of the 89th edition of the Church Manual which is annexed hereto marked Exhibit "A." Among such directions are the following:

Article VIII

CHURCH PERIODICALS. Sect. 14. It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church; and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times.

Article XXV

VACANCIES IN TRUSTEESHIP. Sect. 3. The Christian Science Board of Directors shall have the power to declare vacancies in said trusteeship for such reasons as to the Board may seem expedient.

Whenever a vacancy shall occur, the Pastor Emeritus reserves the right to fill the same by appointment; but if she does not elect to exercise this right, the remaining trustees shall fill the vacancy, subject to her approval.

EDITORS AND MANAGER. Sect. 4. The term of office for the editors and the manager of The Christian Science Publishing Society is one year each, dating from the time of election to the office. Incumbents who have served one year or more can be re-elected, or new officers elected, by a unanimous vote of the Christian

Science Board of Directors, and the consent of the Pastor Emeritus given in her own handwriting.

SUITABLE EMPLOYEES. Sect. 5. A person who is not accepted by the Pastor Emeritus and the Christian Science Board of Directors as suitable, shall in no manner be connected with publishing her books, nor with editing or publishing The Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, nor with The Christian Science Publishing Society.

In thus promulgating her directions relating to the business of said trust by means of Church by-laws Mrs. Eddy, the donor of said trust and the Discoverer and Founder of Christian Science, established, for all time, for the guidance of the Trustees thereunder and all loyal Christian Scientists, her directions as to what is necessary for the promotion of the interests of Christian Science, which is the purpose and object of said trust deed; and when said defendants accepted their appointments under said deed these said directions were known to them and accepted by them as among Mrs. Eddy's directions as to how best to promote the interests of Christian Science.

5. For nearly twenty years following the establishment of The Christian Science Publishing Society under said deed, the Trustees thereof, with the support and cooperation of The Mother Church, its branches and members, conducted the business of said Society in accordance with the provisions of said deed and the directions and requirements of Mrs. Eddy, as contained in said by-laws in the Church Manual, and as thus conducted the said Society flourished and grew in influence, greatly extended and promoted the interests of Christian Science, and prospered financially to the benefit of the plaintiff Church and the cause of Christian Science. During said period and until September 30, 1919, the Trustees acting under said deed paid to the Treasurer of said Church, as the sole financial beneficiary, once in every six months net profits of the business, so that The Mother Church has until recently derived regular and substantial revenue therefrom for its purposes in extending and promoting the religion of Christian Science. The monies so paid for the five years ending March 31, 1919, amount in the aggregate to more than \$1,500,000, and the last payment made to said Treasurer, viz; for the semi-annual period ending March 31, 1919, amounted to \$231,896.58.

6. The periodicals published by said Society include The Christian Science Journal and the Christian Science Quarterly, both founded prior to the date of said trust deed, the Christian Science Sentinel, first published in September, 1898, Der Herold der Christian Science, first published in 1903, The Christian Science Monitor, first published in 1908, and Le Heraut de Christian Science, first published in

1918. That said Journal and Quarterly were adopted by The Mother Church, its members and branches, as organs of said Church, and said Sentinel, Herold, Monitor and Heraut were originally issued and adopted by The Mother Church, its branches and members, as organs thereof, with the understanding on the part of the Trustees of said trust, as well as the officers, members and branches of The Mother Church, that all of said periodicals were to be conducted in accordance with and subject to the directions given by Mrs. Eddy in said trust deed and in the by-laws of said Church. That the patronage and support of said periodicals and their usefulness for the purpose of promoting the religion of Christian Science, always has depended and still depends largely on the fact that they are the organs of said Church, and conducted in accordance with Mrs. Eddy's directions. The defendants publish said periodicals and carry on the business of the trust in buildings owned by the plaintiff Church, and provided by plaintiff Directors under the provisions of Article 1, Section 7, of the by-laws, and not provided for by the trust deed. The above and other benefits derived from Church by-laws the defendants claim the right to enjoy, and at the same time refuse to accept the provisions of the same and other by-laws containing Mrs. Eddy's directions as to how best to promote the interests of the Cause in the execution of said trust. That nearly all of the business of said Society consists of publishing the above mentioned periodicals and they are profitable, in so far as they are profitable, mainly by reason of the patronage of The Mother Church, its branches and members and individual Christian Scientists. Such patronage has always been maintained because Christian Scientists regard it as a privilege and duty to subscribe for the periodicals which are the organs of The Mother Church, and which are to be supplied with editors and ably edited and kept abreast of the times by and under the supervision of said Directors as directed by the donor of said trust through the by-laws of said Church. It is because of such directions, and because Mrs. Eddy enjoined upon Christian Scientists never to abandon the by-laws nor denominational government of The Mother Church, that said periodicals have been recognized and regarded as the organs of said Church, and as authorized Christian Science literature.

7. The continued successful management of the trust, for the reasons above stated, requires on the part of the Trustees thereunder a strict adherence to the teachings of Christian Science and a faithful compliance with the directions of Mrs. Eddy contained both in the trust deed and in the Church Manual as to what is necessary best to promote the interests of Christian Science which is the object and the purpose of said trust deed.

Said defendants, however, have failed so to conduct said business and have refused to be guided by the said directions of Mrs. Eddy as to what is necessary to promote the interests of the Cause, but on the contrary they have assumed an attitude of hostility and defiance to the plaintiffs, the Directors of The Mother Church, the financial beneficiary under said deed, and have antagonized Christian Scientists throughout the world upon whose support the success of said business is dependent, as a result of which many Christian Scientists and branch churches, acting under Article VIII, Sections 11 and 14, of the by-laws have cancelled subscriptions to the periodicals and withdrawn their paid advertisements from the Christian Science Journal, and withdrawn their financial and moral support from said Society as a protest against the misconduct of the business by the defendants; and plaintiffs are informed and believe and so aver that such cancellations are rapidly increasing; and said defendants have also assumed the exclusive editorial control of the periodicals. Because of the above described attitude and conduct of the defendants, many faithful and efficient workers in The Christian Science Publishing Society have resigned their positions, many others have been unjustly and improperly discharged for the reason that they remained loyal to the Church by-laws and that they refused to support the defendants in their refusal to be longer guided by said by-laws and because said workers insisted upon their own individual and conscientious convictions;—in all more than two hundred. Moreover for the same reasons the editors of the Christian Science Journal, Christian Science Sentinel, Der Herold der Christian Science, and Le Heraut de Christian Science, heretofore elected by the plaintiff Board of Directors in accordance with the directions of Mrs. Eddy contained in the Church Manual, have resigned their positions. And solely because of the above described attitude and conduct of said defendants the said periodicals for the time being have ceased to be the organs of said Church within the meaning of the Church Manual and have become the personal organs of said defendants. And plaintiffs aver that the defendants have published misleading statements in certain of said periodicals; that they have denied the right of the Directors of said Church to exercise their power and duty to remove from its organs the cards of persons and organizations found to be ineligible for advertisement as practitioners and teachers of Christian Science and as branches of said Church; and they have also caused to be published public comments on the by-laws and government of said Church, as established by Mrs. Eddy, calculated to cause an abandonment thereof. In consequence of the aforesaid and other facts the

confidence of Christian Scientists who are beneficiaries under said trust deed, in the defendants' management of said business, has been almost wholly destroyed, the business of the trust has been greatly impaired and is threatened with complete destruction.

8. The plaintiffs are informed and believe and therefore aver that the defendants are further mismanaging said business and have contravened the plain requirements and obligations placed upon them by said trust deed and rendered themselves unsuitable to act as Trustees thereunder, in that;—

a. They have not at all times kept on deposit in a responsible and reliable bank or trust company all surplus funds over and above the sum necessary to defray the running expenses of the business until the same shall be paid over to the Treasurer of said Church;

b. That they have employed the trust funds to a large extent for the purpose of purchasing stocks of material for use in an enterprise forming no part of the business contemplated by said trust deed.

c. That they have not judiciously managed the business, but have managed it injudiciously, extravagantly and wastefully and have expended the money of the trust for property not necessary for the immediate successful prosecution of the business in that they have recently for the first time in the history of said Publishing Society, and contrary to the usage of the Christian Science denomination rented quarters at a large expense in the City of San Francisco, California, for the display and sale of their publications and have expended and incurred expense in connection therewith many thousands of dollars:

d. That they have not judiciously managed the business, but have managed it injudiciously, extravagantly and wastefully in that large and excessive salaries and increases of salaries have been paid by said defendants to employees, not in recognition of valuable services or on the basis of merit and worth, but, as the plaintiffs believe, for the purpose of improperly influencing the employees in favor of the defendants and against the plaintiff Directors; and for the further purpose of so depleting profits as to furnish a pretext for a refusal to pay any money to said plaintiff Treasurer from said trust.

e. That they have not judiciously managed the business but have managed it injudiciously, extravagantly and wastefully in that large and excessive amounts have been allowed and paid for traveling and other expenses of the defendants and some of their employees and they have improperly expended other sums of money for other purposes.

f. That they have not judiciously managed the business but have managed it injudiciously, extravagantly and wastefully in that they have destroyed and have sold as junk peri-

odicals which were valuable for sale, reference and distribution.

And plaintiffs further aver upon information and belief that defendants have mismanaged said business and have violated the terms of said trust deed in certain respects other than those hereinbefore specifically set forth.

9. The plaintiffs aver that for the first time in the history of the business conducted under said trust deed these defendants failed and refused to pay to the plaintiff Treasurer of said Church the net profits of said business, as the deed directs, to wit, the net profits for the semi-annual period ending September 30, 1919, and that they also failed and refused to pay to said plaintiff any money as net profits for the semi-annual period ending March 31, 1920, so that more than a year has now elapsed during which said defendants have paid nothing to the beneficiary under said trust as net profits for said year. Plaintiffs are informed and believe and so aver, defendants had a large amount of cash on hand on September 30, 1919, and on March 1, 1920, they had on hand in cash more than \$325,000.

And plaintiffs are informed and believe and therefore aver that according to the method of determining net profits prescribed by said trust deed defendants have had since September 30, 1919, and now have, a large amount of such net profits which they are withholding and failing to pay over in violation of the terms of said deed; that they have, without the consent of the plaintiff beneficiaries, made radical changes in the manner of conducting said business contrary to the requirement of the trust deed, whereby large sums of money, which ought to have been paid over to the plaintiff Treasurer for said Church, have been diverted, misapplied and employed in an unreasonable and unauthorized manner in the purchase of large stocks for future use and not necessary for the immediate successful prosecution of the business as provided in said deed. Furthermore, they have without the consent of the plaintiff beneficiaries made radical and unauthorized changes in the method of accounting in that they have charged off as depreciation extraordinary and improper amounts; and contrary to the methods and practice which had been followed for many years said defendants in the year 1919 charged to expense not only depreciation allowances of \$97,324.18, but also all expenditures for addition to plant and furniture accounts in that year amounting to \$121,045.93, making a total charge for one year for depreciation of \$218,370.11, so that profits and plant assets were unreasonably and improperly reduced. And the plaintiffs are informed and believe and therefore aver that defendants attention was called to their improper and unreasonable changes in the established method of accounting, by

certified public accountants of Boston, Massachusetts, who had been employed for many years by the Trustees under said deed, and said accounting as changed by the defendants was criticised by their said accountants as incorrect, improper and preposterous and as an arbitrary departure from the accepted canons of good accounting; and said plaintiffs aver that the methods thus for the first time adopted by said defendants against the advice of their accountants and without the knowledge and consent of the financial beneficiaries under said trust deed said defendants refused to change, but instead superseded said accountants, and as plaintiffs believe and therefore aver, in order to deprive The Mother Church of monies which according to the trust deed ought to be paid to its said Treasurer, persisted in said improper and unreasonable method of accounting and at great expense employed accountants from Chicago, Illinois, who, with said defendants, have, without the knowledge or consent of the financial beneficiary under said trust deed, so changed and manipulated the method of accounting, which had for many years prevailed, as to make it appear that there are no net profits to be paid to the Treasurer of The Mother Church, but said defendants now claim that by reason of their alleged improper method of calculation of net profits in former years they have overpaid said Treasurer.

10. And the plaintiffs aver upon information and belief that the defendants are secretly attempting in England and other European countries to obtain exclusive registration of and a legal monopoly for the name, description, designation, and title,

"The Christian Science Publishing Society, Boston, U. S. A., Sole Publishers of All Authorized Christian Science Literature, As Established by Mary Baker Eddy."

whereas said trust deed provides that the business shall be done under the unincorporated name of "The Christian Science Publishing Society"; and that defendants are planning and endeavoring improperly to obtain legal sanction for their intended representation that said periodicals are now published by them without regard to Mrs. Eddy's directions relating thereto, as contained in the Church by-laws, are nevertheless the only authorized organs of said Church. And said defendants are thus seeking to obtain the exclusive right to publish Christian Science literature as authorized and as established by Mrs. Eddy, which literature is, in fact, published not in accordance with Mrs. Eddy's directions in the Church by-laws, but in disregard thereof. And plaintiffs aver that unless restrained by the other of this Court defendants will obtain legal sanction for publishing as authorized Christian Science literature that which is not authorized

because published in a manner contrary to the express directions of the donor of said trust and the Discoverer and Founder of Christian Science, to the irreparable injury of the plaintiff Church and in derogation of its rights to control and determine according to its by-laws what is authorized Christian Science literature.

11. And plaintiffs aver that on March 25, 1919, an ad interim injunction was issued by this Court in the case of Eustace, et al v. Dickey, et al, now pending herein, at the instance of said defendants, to preserve the alleged status quo, which injunction has in effect prevented the Directors, plaintiffs herein, pending a decision of said case, from exercising the authority given them by the by-laws of said Church over the Trustees and the business of said trust; that said attempt now being made by the defendants is to alter the relation of the parties before this Court in said case and to affect adversely to said Directors, who are under the temporary restraint of said injunction, the subject matter of said case, while the same is still sub judice; that said attempt of the defendants is contrary to equity and good conscience, and is an effort on their part improperly and unlawfully to extend their rights and powers as the same existed when said temporary injunction issued, and as the same are fixed by said trust deed. And plaintiffs aver that unless restrained therefrom defendants will thereby work irreparable injury to the plaintiff church and the interests it represents.

12. That plaintiffs aver advised and therefore aver that the plaintiffs Dickey, Neal, Merritt, Rathvon, and Knott, composing the Christian Science Board of Directors, the Directors

of said The First Church of Christ, Scientist, have the right to declare the trusteeship of said defendants vacant for such reasons as to them may seem expedient, but they have been temporarily restrained from exercising such right by the aforesaid ad interim injunction issued by this Court; and said plaintiffs, Directors as aforesaid do not waive any right they may have to remove a Trustee under said trust deed by reason of any prayer for relief hereinafter contained. But said Board being temporarily enjoined from taking such action, plaintiffs apply to this Honorable Court representing that the facts complained of hereinabove set forth have arisen since the issuance of said injunction and require the prompt removal of said defendants acting as Trustees under said deed.

WHEREFORE the plaintiffs pray:

1. That an accounting may be had under the direction of this Court.

2. That said defendants be required to pay over to the plaintiff Ripley, as Treasurer of The First Church of Christ, Scientist, in Boston, Mass., the amount found to be due upon such accounting.

3. That the Court remove said defendants acting as Trustees, and appoint new Trustees under said deed, having due regard to the purposes of the donor of said deed and to her directions as expressed therein and in the by-laws contained in the Church Manual.

4. That defendants be restrained and enjoined from adopting or using any name, title, or designation under which to carry on the business of said trust other than the name "The Christian Science Publishing Society," as provided in said deed; and that they be restrained and enjoined from tak-

ing any steps in any country whatever to obtain registration, or the exclusive right to the use of the name, description, title, or designation "The Christian Science Publishing Society, Boston, U. S. A., Sole Publishers of All Authorized Christian Science Literature As Established by Mary Baker Eddy", or of any legend or description implying that said defendants are sole publishers of all authorized Christian Science literature.

5. That in order to prevent irreparable injury, a temporary injunction forthwith issue restraining said defendants as above prayed for.

6. And for such further relief as justice and equity may require.

By their Solicitors,
Bates, Nay, Abbott & Dane,
Clifford P. Smith.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. April 10, 1920.

Personally appeared the above named plaintiffs, Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon and Annie M. Knott, and the above named plaintiff Edward L. Ripley, and made oath that the statements of fact in the foregoing bill made upon knowledge are true; and that those made upon information and belief, they believe to be true.

Before me,

Leon M. Abbott,
Justice of the Peace.
Commission Expires December 10, 1926.

"Exhibit A referred to in the above Bill in Equity is copied from the Deed of Trust appearing in the Church Manual." Publisher.

Trustees' Answer to Directors' Bill in Equity

BOSTON, Massachusetts—An answer to the new bill in equity of the Directors of The First Church of Christ, Scientist, was filed Saturday, April 24, 1920, in the Massachusetts Supreme Court by the Trustees of The Christian Science Publishing Society.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
SUFFOLK, ss. IN EQUITY
ADAM H. DICKEY, et ali
v.
HERBERT W. EUSTACE, et als

ANSWER OF DEFENDANTS

By way of special matter in answer to the plaintiffs' bill, the defendants say that heretofore, to wit, on the 25th day of March, 1919, these defendants filed in this Court their bill in equity (No. 30,654 on the docket hereof) against the plaintiffs, Dickey, Neal, Merritt, Rathvon and Knott, and one John V. Dittmore, claiming to hold the position and office of Trustee and Director in association with the other plaintiffs, a copy of said bill being hereto annexed marked "Exhibit 1," and the averments therein being made by reference a part of the defendants' answer so far as applicable.

Said suit in due course was referred to a Master for the determination of facts at issue between the parties, and after full hearing said Master, in due course, filed in this Court, in said suit numbered 30,654, his Master's report, a copy whereof is hereto annexed marked "Exhibit 2," said report being made, by reference, a part of the answer of the defendants so far as may be necessary to show the findings of the Master as affecting the issues tendered by the averments of the plaintiffs' bill.

Most of the averments of this bill were set up by way of answer by the defendants in said suit of Eustace v. Dickey (No. 30,654), and the issues of fact thus made up were determined by the Master, and his determination and judgment thereof were by him reported in the Master's report (Ex. 2), to which reference is hereby made.

These defendants are informed and advised that so far as issue between the plaintiffs and themselves in this suit are the same as those raised in the suit of Eustace v. Dickey (No. 30,654), they are not called upon to make answer in this suit, and that the plaintiffs are not permitted, having

once tried out the issues which they now seek to raise, again to raise and try the same in this Court as against these defendants, but are bound to await the final decision in Eustace v. Dickey, now pending in the Supreme Judicial Court for the Commonwealth, and they respectfully move this Honorable Court to rule and order accordingly.

Hereinafter in this answer the defendants will, for convenience, designate the plaintiffs Dickey, Neal, Merritt, Rathvon and Knott as Directors, meaning thereby to designate said plaintiffs as acting Directors for the time being, the Master having found, as appears by his report (Ex. 2), in Eustace v. Dickey, that said Merritt is not a member of the Christian Science Board of Directors in the sense in which that term is used in the Deed of Trust of January 25, 1898, and having further found that the plaintiff Knott is not and never has been a member of the Christian Science Board of Directors, but that one John V. Dittmore has heretofore been and continues to be a Director in the office to which said Knott lays claim.

The defendants are advised and accordingly aver that said John V. Dittmore, having been found in the Master's report (Ex. 2) to be a member of the Christian Science Board of Directors, and the purpose of the suit being to enforce the provisions of a charitable trust, both said Dittmore and the Attorney-General of the Commonwealth are necessary parties.

The defendants are unable either to admit or deny the averment that the plaintiff Ripley is the duly elected, qualified and acting Treasurer, but leave said question to the determination of the Court upon the findings of the Master in his report (Ex. 2) and the evidence offered at the trial.

As to the averments of the plaintiffs' bill not covered or included in the issues raised in said case of Eustace v. Dickey (No. 30,654), these defendants answer as follows:

1. Whether or not The First Church of Christ, Scientist, in Boston, Massachusetts, is the sole financial beneficiary under the Trust Deed creating trustees of The Christian Science Publishing Society, dated January 25, 1898, as these defendants are informed and advised, is a question of law to be determined by the Court from the provisions of said Trust Deed. These defendants, therefore, neither admit nor deny the averment in paragraph 1 of the plaintiffs' bill as to the financial beneficiary of said Trust, but refer to

said Trust Deed, a copy whereof is annexed to the plaintiffs' bill, marked "Exhibit B."

The provisions in said Deed creating the financial beneficiary are as follows (Par. 4):

"Once in every six months the Trustees shall account for and pay over to the treasurer of 'The First Church of Christ, Scientist, in Boston, Massachusetts,' the entire net profits of said business, . . . Said treasurer shall hold money so paid over to him subject to the order of 'the First Members' of said Church, who are authorized to order its disposition only in accordance with the rules and by-laws contained in the Manual of said Church."

So far as the defendants are informed, the Manual of said Church does not and never has established rules and by-laws providing for the disposition of the money paid over to the Treasurer of the Church to be held by him subject to the order of "the First Members."

The purpose of the trust as declared in said Trust Deed is for "more effectually promoting and extending the religion of Christian Science as taught by me" (the donor), and as these defendants are informed and advised, in the absence of any provisions whatever in the Manual of the Church establishing rules and by-laws covering the subject, the Treasurer should have expended the money paid over to him by the Trustees under said Trust subject to the order of "the First Members" of said Church.

Upon the foregoing facts and the Master's report, these defendants submit to the decision of this Honorable Court the question as to who is the financial beneficiary of the Trust, and what is the proper disposition of said trust funds.

2-6. The averments of paragraphs 2, 3, 4, 5, and 6 of the bill set up facts which were pleaded in the answer of the defendants in Eustace v. Dickey (No. 30,654) and which were duly put in issue in that case and heard in due course by the Master. The findings of the Master on all controverted points as shown by said report (Ex. 2) were adverse to the contentions and claims set up by the averments contained in said paragraphs.

Accordingly, the defendants will make no further answer thereto, except by incorporating herein the findings of said report and adopting said findings as their answer to the averments of the bill:—unless directed to answer further by the Court.

7. The defendants join with the

plaintiffs in the averment in paragraph 7 to the effect that the continued successful management of the trust requires on the part of the Trustees a strict adherence to the teachings of Christian Science and the compliance with the directions of Mrs. Eddy contained both in the Trust Deed and in the Church Manual as to what is necessary best to promote the interests of Christian Science, and in the statement that the promotion of the interests of Christian Science is the object and purpose of said Trust Deed.

And they aver further that continued success in the management of the affairs of the Publishing Society requires the Directors and all Christian Scientists to support the Trustees in the discharge of their duties under the Deed of Trust creating the Publishing House, and further requires the Directors and all Christian Scientists as well as the Trustees to comply with the directions for the management of the Trust which Mrs. Eddy incorporated in the Trust Deed and in the Church Manual.

The defendants state the fact to be that the individual Directors have not supported the Trustees in the discharge of their duties under Mrs. Eddy's Deed of Trust, and have failed to comply with Mrs. Eddy's directions for the management of the Trust incorporated by her in the Trust Deed and in the Church Manual, but, with certain sympathizers, adherents, and agents, have done the things (more fully hereinafter set forth) which tend to impair, if not entirely destroy, the successful management of the Publishing Society's affairs which these defendants have succeeded in establishing, and to injure, if not wholly to defeat the great purposes which Mrs. Eddy planned to achieve by her Publishing Society in the promotion of Christian Science throughout the world.

The other averments of paragraph 7, not already answered, the defendants deny. They deny each and every averment and statement thereof as fully, specifically and emphatically as if each separate sentence and averment was specifically and separately denied.

But with reference to the matters referred to and set up in said remaining averments of paragraph 7 the defendants, further answering, state the facts to be as follows:

Upon the filing of the bill in Eustace v. Dickey (No. 30,654), an injunction was granted, a copy whereof is hereto annexed marked "Exhibit 3."

Shortly after the service of said injunction upon the defendants in that case and before the hearings were begun, the plaintiffs Dickey, Neal, Rathvon and Knott, together with their counsel, one Clifford P. Smith, who is also Publication Committee, so-called—an official subordinate to and under the direction of the plaintiffs—violated said injunction, and, upon complaint before this Court, were duly punished

for such violation; the said plaintiffs Dickey, Neal, Rathvon and Knott, being subjected to a fine of \$50 each, and said Smith to a fine of \$100.

But thereupon and thereafter, as the defendants aver upon information and belief, the Directors did not yield their purpose to accomplish what they had intended to accomplish but which they were forbidden by said injunction to do, but conceived a plan whereby, in case the result of the litigation should be adverse to their contentions, they might through others and by indirect means, do the things and accomplish the results that were forbidden by said injunction.

For a season after the violation of the injunction and proceedings in connection therewith hereinabove set forth, and during prolonged hearings before the Master and argument of the case thereafter, while the Directors and their counsel, said Smith, were quiescent, new and additional subscriptions to the periodicals were made, the sales of publications were increased, and in general the business of the Publishing House was prosperous.

On December 20, 1919, counsel for the parties were furnished with a draft of the Master's report in form not different substantially from the final report, of which "Exhibit 2" is a copy. Immediately upon the findings in said report, which were sweepingly adverse to the Directors' contentions, being made known to the Directors, one Harney, who had been for some years private secretary to said Smith, counsel and Publication Committee, as aforesaid—in accordance, as the defendants believe and accordingly aver, with a preconceived and prearranged plan so to do—sent out generally to State Committees of Publication, subordinates of said Smith, and others, messages by wire in which the suggestion was urged that in view of the unfavorable nature of the Master's report, Christian Scientists now might well begin cancelling their subscriptions to the periodicals published by the Publishing Society.

Although said Smith protested that said messages were not sent out by his authority or at his instigation, and discharged or pretended to discharge said Harney from his service, yet neither said Smith nor the plaintiffs publicly and adequately repudiated the substance of the messages which had been sent out, but, on the contrary, their conduct created a general feeling and belief in the field of Christian Scientists that said messages represented the wishes and desires of the Directors and said Smith, which, however, by reason of the injunction, they, the said Directors and said Smith, were themselves unable openly to express.

Immediately thereafter, persons appeared at meetings of Christian Science churches in different sections of the country, actively urging the mem-

bers of the churches to do those things which were forbidden to be done by the outstanding injunction, and especially urging the doing of those things which would injure the Publishing Society and diminish its business. Said persons urged and incited the churches and members to cancel their subscriptions to the periodicals of the Publishing Society, to cancel their contracts with the Society for advertising in its periodicals, to pass resolves at church meetings criticising the Trustees, calling upon them to resign, and tending to insult and humiliate them in this and other similar ways.

Said persons, or some of them, made statements with regard to the Trustees and their administration of their trust which were scandalously false and for which there was absolutely no foundation in fact. Said persons generally represented to the audiences which they addressed, and Christian Scientists with whom they talked, that they were acting in accordance with the wishes of the Directors of The Mother Church and with their approval; that they had come directly from the presence of these Directors, and knew that what they were doing and saying had the Directors' approval, but that by reason of the outstanding injunction, the Directors were not permitted and did not dare to publicly state their approval of what was being said and done.

The similarity of the things that were said and done in different sections of the country and by different people, unmistakably indicated that what the respective persons were doing was being done in accordance with a preconceived and deliberate plan, which plan had for its purpose and object to use those means, the use of which was forbidden by the outstanding injunction, to induce or compel the Trustees to resign their positions because of indignities and humiliations heaped upon them, and the threat of utter destruction of the business of the Publishing House.

The things which were being said and done by these persons, as above set forth, were from day to day reported in the public press, and well-known by all Christian Scientists throughout the country. These things were directly and specifically called to the attention of the personal plaintiffs, and each and every one of them, by those acting in behalf of the Trustees.

Printed circulars containing statements of these persons were sent out by them to Christian Science churches and Christian Scientists throughout the world, and in each instance, as the defendants are informed and believe, and accordingly aver, copies thereof were sent to the Directors themselves.

Statements were repeatedly made through the public press that what these persons were doing and saying

was done and said with the approval and authority of the plaintiffs, and although these statements were specifically called to the attention of the plaintiffs, it was never denied by the plaintiffs, or any of them, that said statements were made and things were done with their approval and authority.

None of the plaintiffs, nor any of them, so far as the defendants have information—although they knew that the things, which were being said and done by persons publicly declaring that they were acting in behalf of the Directors, were said and done in violation of the outstanding injunction—ever denied that the actions of said persons were approved by them, and never requested, either directly or indirectly, of the persons known by them to be doing the things in violation of the injunction, that they should cease and refrain from further acts and conduct in disobedience to the order of the Court.

It is declared in the Church Manual (Article XXXIII, Section 2) to be the duty of the Committee on Publication to correct misstatements appearing in the public press or circulating literature of any sort with reference to matters affecting Christian Science or Christian Scientists. If the statements of the aforesaid persons, that they were speaking and acting under and by the authority of the Board of Directors and with their approval, were untrue or incorrect, it was the duty of said Smith, as Committee on Publication, as declared specifically by the Manual, to correct said misstatements either directly or through his subordinate committees on publication in the different states; and in case he failed so to do it was the duty of the Directors, whose appointee he was, to see that said Smith performed his duty; but neither said Smith nor any of the subordinates ever either directly or indirectly, as the defendants are informed and believe, undertook to contradict, modify or in any way correct said statements of said persons that they were acting under the authority of the Board of Directors and with their approval; as a result of which conduct on the part of said Smith and of the Directors, said persons, who claimed and asserted that they were acting under the authority and with the approval of the Directors and Christian Scientists in general, rightly assumed that the Directors did authorize and approve what was being said and done by the persons ostensibly acting in their behalf.

Upon information and belief the defendants aver that many inquiries from Christian Scientists throughout the country were addressed to the Directors for information as to whether the things that were being said and done by those purporting and pretending to act with the Directors' authority and with their approval, were actually approved by the Direc-

tors. In no case did the Directors ever in terms repudiate said conduct or deny that it was with their approval, but in all cases sent a stereotyped reply artfully contrived and phrased so as plainly to suggest to the persons receiving the same that the conduct and statements referred to were with the plaintiffs' approval, but that by reason of the outstanding injunction the Directors were restrained from saying so.

Among the persons thus engaged in spreading false statements, and actively doing those things which were forbidden by the outstanding injunction, have been the said Harney, above referred to, and other employees of the plaintiffs, or former employees, and persons receiving wages or salary, and all or practically all have been persons under the influence, domination, and control of the Directors.

Upon information and belief, the defendants state the fact to be that all of the things done by the persons hereinabove described were done in pursuance of a prearranged plan which was either inspired and arranged by the Directors and said Smith, or was inspired and arranged by their connivance and by their approval with other persons known by the Directors and said Smith to be acting in their interests.

But despite the things done as above set forth, the business of the Publishing Society, although its progress was retarded, was not substantially injured, inasmuch as new subscriptions came in to substantially the amount of those canceled.

Thereupon, the Directors, together with said Smith, being disappointed in the measure of harm to the Publishing Society which they had expected to result from what had been done in pursuance of the plan hereinabove set forth, inspired and promoted other measures for the further embarrassment of the Trustees in the administration of their trust, and calculated to bring about further and more serious injury to the business of the Publishing Society.

On the 12th day of March, 1920, one William P. McKenzie, who had been for sometime Editor of the Christian Science Sentinel and Christian Science Journal, published by the Publishing Society, presented his resignation and ceased his duties as Editor, entirely without notice.

Said McKenzie's Associate Editor, Mrs. Ella W. Hoag, and his secretary, Elisha B. Seeley, presented their resignations and left the Publishing Society coincidentally with said McKenzie.

Said McKenzie's resignation was presented immediately after conferences with the Directors, or some of them, and as these defendants believe and aver, said McKenzie and his associates resigned and left the Publishing Society in pursuance of an understanding with the Directors intended more seriously to embarrass the Trus-

tees in the administration of the business of the Trust in a manner herein-after pointed out. Thereupon, as the defendants believe, in pursuance of the same scheme and plan on the part of the Directors to embarrass them in the administration of their trust, some two hundred of their employees suddenly and without notice left the employment of the Publishing Society in a manner calculated most seriously to embarrass the defendants in printing and publishing their periodicals. The concerted action of all these employees, these defendants aver upon information and belief, was known to the Directors, was approved and encouraged by them, in a manner which justified the belief on the part of these employees that they were acting in the interests of the Directors with their approval, if not as a result of their direct instigation.

Immediately following the concerted action of these employees in leaving the employ of the Publishing House, committees self-constituted as such, opened headquarters in Boston and actively circularized Christian Science churches and Christian Scientists throughout the United States, seeking contributions of funds for the support of the deserting employees, and for the payment of their expenses incurred in the execution of the conspiracy to do injury to the business of the Publishing Society in violation of the outstanding injunction.

These requests were read in some of the branch churches and funds collected in connection with said services and in response to said requests.

Prior to these requests for funds, the persons acting in concert with the Board of Directors in encouraging and inciting the cancellation of subscriptions and advertisements, had also sent out requests for contributions to a fund to be used for their own expenses in their plan of propagandizing against the Trustees and for the employment of counsel, and expenses of litigation in suits contemplated against the Trustees.

Prior to these solicitations it had been the invariable custom of the Directors to discourage the solicitation of funds from branch churches except under their authority as officials of The Mother Church, and it had been the habit of the Directors in case of solicitation of funds of which they did not approve, to publish in the Christian Science Journal or Christian Science Sentinel a statement to the effect that the solicitations for funds in question were not made by their direction,—thus implying their disapproval of the solicitations.

Although the solicitations hereinabove described were made known to the Directors, and the fact that the solicitors intended to use the same in a manner injurious to the interests of the Trustees and the Publishing Society, yet the Directors have neither directly or indirectly, either in writing or otherwise, discouraged the con-

tribution of funds for the purposes aforesaid, and have never given notice that the solicitation was not by their authority; but, on the contrary, by their active conduct, as well as by their silence, have given approval to such solicitations and encouraged members of the branch churches to respond thereto.

Being thus left as a result of the secret activities and instigation of the Directors and said Smith without editorial staff for the periodicals belonging to the Trust, these defendants temporarily employed editors in order to prevent the possibility of suspension of publication of periodicals founded by Mrs. Eddy and of such inestimable value in carrying out her divinely inspired purposes for the promotion of Christian Science.

The Deed of Trust of January 25th, 1898 (Exhibit B) (paragraph 6), provides in the words of Mrs. Eddy herself,—

"Said Trustees shall employ all the help necessary to the proper conduct of said business. . . ."

And said section further provides that,—

"... the business manager may call in at times of necessity such temporary help as will facilitate the business."

Said Trust also provides (paragraph 3),

"Said Trustees shall energetically and judiciously manage the business of the Publishing Society on a strictly Christian basis, and upon their own responsibility. . . ."

It was therefore not merely the right, but the absolute duty of the Trustees in the emergency and crisis which the action, inspired and approved by the Directors, had precipitated, to do the things which they did do in providing the help necessary for the proper conduct of the business which Mrs. Eddy had enjoined upon them, to "energetically and judiciously manage . . . upon their own responsibility."

These defendants requested the Directors, as officials of The Mother Church, to approve the editors thus temporarily employed, which the Directors peremptorily refused to do.

Thereupon, the defendants requested the Directors to name editors of whom the Directors would approve, and this they refused to do.

The defendants thus invited the approval by the Directors of their temporary employment of editors and the naming of editors of whom they, as officials of The Mother Church, would approve, because they have always regarded it as essential to the best interests of Christian Science that the Trustees in the exercise of their rights and performance of their duties under the Deed of Trust, should act with unity of spirit and cooperation with the officials of The Mother Church in carrying out the purposes of Mrs. Eddy.

Section 4, Article XXV, of the Manual, provides that editors can be

elected "by a unanimous vote of the Christian Science Board of Directors and the consent of the Pastor Emeritus (Mrs. Eddy), given in her own handwriting."

The Pastor Emeritus having passed on, the provision as to her consent "given in her own handwriting" can no longer be complied with. There being a dispute as to what persons constitute the Christian Science Board of Directors (as appears from the Master's Report, Ex. 2) it was impossible, without negotiation and agreement together, to secure election of an editor "by a unanimous vote of the Christian Science Board of Directors."

The selection of editors being therefore no longer possible in literal compliance with the Manual, their selection can be made only by way of approximation to the method declared in the Manual and by agreement of the parties having to do with the matter.

Heretofore, since the passing of Mrs. Eddy, selection of editors had been made by agreement between the Directors and the Trustees, whereby the Christian Science Board of Directors by a unanimous vote approved or elected, and the Trustees, under the authority of Mrs. Eddy's Trust Deed, (Section 6) employed the editors as "help necessary to the proper conduct of" their business.

The defendants aver upon information and belief that the resignation of the editors and the leaving of their service by employees, all without notice, and the refusal of the Directors to cooperate with the Trustees as heretofore in the selection of editors of their periodicals, are a part of a plan ingeniously contrived and deliberately devised, in order to embarrass the Trustees and injure the business of the Publishing Society more seriously than the Directors had been able to do by the means which they had theretofore adopted; and in pursuance of said plan, those acting in the interests of the Directors and with their approval, have more actively and vigorously urged Christian Science churches and Christian Scientists generally to cancel their subscriptions to the periodicals published by the defendants, on the ground that since said periodicals were no longer edited by persons who had the Directors' approval as editors, said periodicals were no longer organs of The Mother Church, but on the contrary were spurious Christian Science literature.

The scheme thus contrived by the Directors and those assisting them in the execution of their plan and purpose, as above described, has done a grave and serious injury to the business of the Publishing Society. The Directors and those aiding them have thereby deliberately and intentionally accomplished serious and lasting injury to institutions, created and inspired by Mrs. Eddy herself and calculated by her to be powerful instrumentalities in the promotion of Christian Science. The Directors and their

associates have thereby sacrificed the interests of Christian Scientists, of The Mother Church, and of the Trust created and inspired by Mrs. Eddy, in order to achieve by indirection the things forbidden by the outstanding injunction of this Honorable Court, and thereby to render nugatory such decision as this Honorable Court may render on the Master's report which is now before it for consideration. By such action, the Directors, as officials of The Mother Church, have very seriously diminished the profits of the Publishing Society, and thereby diminished the revenues which would otherwise have accrued to The Mother Church, to which all the net profits of the business of the Publishing Society accrue.

Accordingly, these defendants deny, that they have, as stated in the bill, assumed an attitude of hostility and defiance to the Directors, but they state the fact to be that in all that they have done they have merely discharged the sacred trust of Mrs. Eddy, in accordance with the terms of the Trust Deed signed by her, and by Mrs. Eddy made deliberately "perpetual and irrevocable" in its terms.

But they state the fact to be that the Directors themselves have assumed an attitude of hostility toward the Publishing Society and its Trustees, and defiance to the plain directions of Mrs. Eddy contained in her Trust Deed, and a willful purpose, in case they cannot govern the affairs of the Publishing Society, despite the directions of Mrs. Eddy to the contrary, utterly to ruin and destroy the business of the Publishing Society and the great and sacred Trust which Mrs. Eddy created as the chief instrumentality to carry out her inspired purpose for the promotion of Christian Science, by the promulgation of its teachings.

These defendants deny that they have, as stated in the bill, antagonized Christian Scientists throughout the world, but they say that such antagonism as has been displayed has been created by the Directors themselves and their agents, by means of deliberate misrepresentations, charges that are scandalously false, and the exercise of a predominating power and influence which they have exerted for the deliberate purpose of injuring Mrs. Eddy's publications.

The defendants admit that many Christian Scientists and Christian Science churches have canceled subscriptions to the periodicals, and withdrawn their advertisements, but they deny that such action has been based upon any failure on the part of these defendants properly to administer their trust; but they state the fact to be that such cancellations and withdrawals of financial support have been due to the wrongful conduct of the Directors in the respects hereinbefore set forth. The defendants deny that the cancellations which have been inspired and brought about by the Di-

rectors by their wrongful acts as hereinabove described, are rapidly increasing, and state the fact to be that at the present time new subscriptions are being received in a measure offsetting the cancellations.

The defendants deny that they have assumed exclusive editorial control of the periodicals as averred in the bill, although they say that they plainly have the right so to do under the authority of Mrs. Eddy conferred in her Trust Deed; and they state the fact to be that they have invited the Directors to join with them in the installation of editors who shall have the Directors' approval and be employed by the Trustees as provided in Mrs. Eddy's Trust, but that the Directors have intentionally and deliberately refused to participate in the selection of editors solely for the purpose of doing a greater and more lasting harm and injury to the business of Mrs. Eddy's Publishing House and to the Trustees personally than they have been able to do in any other way; and the defendants further say that they as Trustees, in a crisis threatening the destruction of instrumentalities provided and inspired by Mrs. Eddy, have proceeded under the authority of Mrs. Eddy to provide "the help necessary to the proper conduct of said business," and have in this "time of necessity" called in "such temporary help as will facilitate the business," exactly as provided in the Trust Deed.

The defendants deny that any faithful and efficient workers in the Christian Science Publishing Society have resigned their positions because of any attitude or conduct on the part of the defendants which would justify such resignation; and they state the fact to be that such workers in the Publishing Society as have resigned their positions have done so because of the wrongful and malicious inspiration of the Directors, who have deliberately misled said workers and imposed upon their religious faith for selfish purposes, thereby inducing said workers to join with them in an attempt to injure and, if possible, destroy a trust created by Mrs. Eddy and her instrumentalities.

The defendants deny that faithful and efficient workers have been unjustly and improperly discharged from the service of the Publishing Society for the reason that they remained loyal to the Church By-laws and refused to support the defendants, and because of their insistence upon their own individual and conscientious convictions; and they state the fact to be that they have discharged employees of the Publishing Society only for reasons of neglect in the performance of their duties, largely inspired, as the defendants believe, by the Directors themselves to undermine the business of the Publishing Society and impair or wholly destroy its business success.

The defendants deny that the editors of the periodicals of the Publishing

Society resigned their positions for the reasons stated in the plaintiffs' bill; and they state the fact to be that said editors disloyally resigned their positions entirely without notice to the defendants, with a purpose inspired in their mind by the Directors themselves of thereby embarrassing the defendants in the discharge of their duties as Trustees and injuring or destroying Mrs. Eddy's Trust and impairing or destroying its business success, to the end that in violation of the outstanding injunction, the terms of which said editors well know, they might assist the Directors to accomplish what is forbidden by said injunction to be done, and render the anticipated decision of this Court in the suit of Eustace v. Dickey (No. 30,654) a useless nullity.

The defendants deny that because of any attitude or conduct of themselves the periodicals of the Publishing Society have, for the time being, ceased to be organs of the Church within the meaning of the Church Manual, and have become the personal organs of the defendants; and they state the fact to be that said periodicals were created to be the organs of The Mother Church by Mrs. Eddy herself, that they have been managed by the defendants strictly in accordance with the directions of Mrs. Eddy in the Trust Deed and in the Manual as nearly as the circumstances recently confronting them have permitted; that the statement by the Directors that these periodicals are no longer organs of The Mother Church has been secretly disseminated with malicious intent and purpose on the part of the Directors, in violation of the outstanding injunction hereinabove referred to, in order thereby, even at the cost of the destruction of institutions created by Mrs. Eddy, the Directors may exercise their will, which they have substituted for the commands and directions of Mrs. Eddy herself, and which they seek to impose at any cost, no matter how great, upon the Christian Science movement throughout the world.

The defendants deny that they have ever published misleading statements in said periodicals, or any of them, or that they have ever denied any right the Directors of the Church may have to exercise any power to remove from the Church organs the cards of persons and organizations found to be ineligible for advertisements as practitioners and teachers of Christian Science and as branches of said Church; and they state the fact to be that no right whatever of the Directors has been denied to them, and that only unjust, unauthorized encroachment by the Directors upon the duties imposed upon the Trustees by Mrs. Eddy herself have been resisted.

The defendants deny that they have caused to be published any comments on the By-Laws and government of the Church as established by Mrs. Eddy calculated to cause an abandon-

ment thereof; and they state the fact to be that the conduct of the plaintiffs in their deliberate attempt to destroy institutions created and inspired by Mrs. Eddy, in violation of the provisions and spirit of the Manual of The Mother Church, in violation of the injunction of this Honorable Court, in violation of sound and dispassionate judgment, has done all that has been done to cause among Christian Scientists an abandonment of the By-Laws and Mrs. Eddy's directions as to the government of her Church on one hand and the conduct of the business of the Publishing Society on the other.

The defendants deny that in consequence of any facts for which they are responsible the confidence of Christian Scientists in the Trustees' management has been almost wholly destroyed or the business of the Trust has been greatly impaired or is threatened with complete destruction; and they state the fact to be that these pitiable results, the loss of confidence such as exists, the impairment of the business of the Trust and its threatened complete destruction, result solely from the selfish, intolerable and malicious conduct of the Directors, heretofore set out in this answer, which has for its purpose solely the complete, autocratic domination by the Directors of the Christian Science movement, although such aim and purpose involved the destruction of the entire theory of Mrs. Eddy as to the promotion of Christian Science and the instrumentalities which she built up for the fulfillment of her inspired purposes.

The defendants, further answering, say that the plaintiffs do not come into this Court seeking the exercise of its powers in their behalf with clean hands, but that on the contrary, the Directors, by the acts hereinabove described, whereby they have actively attempted, or approved the efforts of others, to do injury to the business of the Publishing Society and to the defendants as its Trustees, and by their violation of the injunctive orders and decree of this Honorable Court, have disintituled themselves to the relief which they seek by their bill, or to any relief whatever. And the defendants say that the plaintiff Directors have violated the maxim of the administration of equity that those who seek equity must do equity. Wherefore, the defendants ask that on the grounds above stated it may be decreed that the plaintiff Directors are not entitled to any relief in this bill, but that their bill shall be dismissed.

8. The defendants deny that they have in any respect whatever mismanaged the business of the Publishing House, or that they have contravened the plain requirements or obligations of the Trust Deed, or that in any respect their conduct has rendered them unsuitable to act as Trustees; and they deny directly each and every specification set out in paragraph 8 of the bill, in which they are charged

with not having conducted the business of the Publishing Society efficiently and with success; and they state the fact to be that, throughout, their conduct of the business of the Publishing Society has been in accordance with the terms of the Trust, with a proper degree of efficiency, and with creditable success. And further answering, they say that all, or nearly all, of the things set up in said paragraph 8 were heard by the Master and concluded in the findings in his report (Ex. 2) adversely to the claims of the Directors, and that the Directors cannot be permitted here and again to try issues already foreclosed against them.

9. The defendants deny that they have ever failed or refused to pay to the Treasurer of the Church the net profits of the publishing business as the Deed directs; and they state the fact to be that they have always paid over said profits as they have accrued, strictly or substantially in accordance with the technical terms of the Deed; and they state the fact to be that no payment was made to the said Treasurer for the period ending September 30, 1919, simply because an examination of the books showed that the defendants had already paid over to said Treasurer in previous settlements sums largely in excess of the amounts due under the terms of said Trust Deed, so that nothing was due by way of profits on said period. The act of the defendants in this respect is in accordance with the opinion and direction of certified accountants of the highest standing as to the proper method and system of determining profits under the terms of the Trust Deed.

The accounts for the six months' period ending March 31, 1920, are now being made up, but are not yet completed, and the payment of profits which have accrued during that period has not been made and cannot be made until said accounts are completed and verified. Whatever profits may be determined to have accrued in said period will be promptly paid over in ordinary course.

The defendants admit that they had on hand on the dates set forth in the bill considerable sums of money, but they aver that such fact is entirely immaterial, except as showing the success, prosperity, and able management of the business, because they are required by the terms of the Trust Deed to pay over to the Treasurer of the Church not the amount of cash that they have on hand at a particular date, but the amount of net profits which have accrued as of said date. The defendants deny that they have withheld or failed to pay over net profits to the Treasurer of the Church, either in violation of the terms of the Trust Deed or otherwise; and they state the fact to be that they have paid over all such net profits. They deny that they have made radical changes in the manner

of conducting the business contrary to the requirement of the Trust Deed; and they state the fact to be that they have at all times in good faith conducted said business in a manner which they believe to be strictly in accordance with the requirements of the Trust Deed. They deny that any sum of money, however small, which ought to have been paid over to the Treasurer of the Church has been diverted, misapplied, or employed in an unreasonable or unauthorized manner; and they state the fact to be that all the funds in their hands as trustees have been applied with sound judgment and with business skill in the conduct of the business committed to their charge; all of which appears in the specific findings of the Master in the report in *Eustace v. Dickey* (Ex. 2). The defendants admit that they have made changes in the method of accounting, but they deny that such changes are radical or unauthorized or in any respect improper; and they say that the question whether they were made with or without the consent of the Directors is entirely immaterial, because they were not required to have the consent of the Directors to a method of accounting which is proper and justified by the rules generally followed by accountants in such matters. They specifically deny that they have charged off as depreciation extraordinary or improper amounts; and they state the fact to be that their accounting methods are not contrary to but are in accordance with the "accepted canons of good accounting." The defendants further answering say that they are ready to submit to this Honorable Court the methods of accounting which have been adopted under the advice of accountants of unimpeachable standing, and submit to any decision or direction that may be given by the Court in connection therewith.

10. The defendants deny that they have secretly attempted in England, or elsewhere, to obtain exclusive registration of any name, description, designation, or title whatever; but they state the fact to be that they have openly and vigorously attempted to protect, as against unfair competition or infringement of their legal rights, the exclusive right on their part to use the name, designation and title set forth in this paragraph of the plaintiffs' bill, substantially that form as appeared upon all the publications of the Christian Science Publishing Society for a series of years without a challenge of the right of the Publishing Society from any person or source. The defendants state the fact to be that of said title the words "The Christian Science Publishing Society" is the title under which the Trust Deed provides that the business of the Publishing Society shall be done. The words "Boston, U. S. A." are descriptive of the principal place of business. The words "sole publisher of all authorized

Christian Science literature as established by Mary Baker Eddy" are words descriptive of the business in which the Publishing Society is engaged, and not as alleged in the bill a part of the name under which they do business. Further answering, the defendants say that said words "sole publisher of all authorized Christian Science literature as established by Mary Baker Eddy" constitute a truthful and correct statement of fact, it being true that the Publishing Society is the publisher of all authorized Christian Science literature as established by Mrs. Eddy, and that no other concern or publishing house has the right or authority to publish Christian Science literature as authorized or as established by Mrs. Eddy, either under the terms of the Deed of Trust, the Church Manual, or by any authority from Mrs. Eddy or her legal representatives. The defendants deny that they are planning and endeavoring improperly to obtain legal sanction for any improper representation as to the periodicals which they publish; and they state the fact to be that any action which they have taken has been in the proper performance of their duty and exercise of good business judgment to protect the periodicals published by them as authorized organs of The Mother Church strictly in pursuance of Mrs. Eddy's directions relating thereto, and in accordance with the By-Laws of the Church, from piratical attacks from any source or injury by unfair competition. The defendants deny that they intend or have endeavored to obtain legal sanction for publishing as authorized Christian Science literature that which is not authorized, or to do any act whatever causing injury irreparable or otherwise to The Mother Church or in derogation of its rights under the By-Laws; and they state the fact to be that they intend by every legal or proper means to protect their publications as authorized Christian Science literature, published in accordance with the express directions of Mrs. Eddy in her Deed of Trust and in accordance with the terms of the Manual, of which Mrs. Eddy was the author.

11 and 12. The defendants make no answer to the averments of the bill in paragraphs 11 and 12, except by order of the Court, further than to refer to the report of the Master in *Eustace v. Dickey* (No. 30,654) and the findings therein, which are adverse to the Directors on the issues which they seek to raise by the averments contained in said paragraphs.

WHEREFORE these defendants pray that the plaintiffs' bill may be dismissed.

SHERMAN L. WHIPPLE,
LOTHROP WITHINGTON,
Solicitors for Defendants.

CHAS. E. HUGHES,
SILAS H. STRAWN,
of Counsel.

Reservation to Full Court Concluded

BOSTON, Massachusetts — Justice Pierce of the Supreme Judicial Court of the Commonwealth of Massachusetts Thursday, April 28, 1920, after hearing arguments, entered the order of reservation in the case of Eustace et als. vs. Dickey et als. Arguments as to the form of reservation to the full court were heard as follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. In Equity
EUSTACE ET AL V. DICKEY ET AL.
BEFORE MR. JUSTICE PIERCE

Boston, April 28, 1920.

MR. BATES: In the matter of the case of Eustace v. Dickey which your Honor said you would reserve for the decision of the Full Court, the reservation which we have drafted reads as follows:

RESERVATION

"This case came on to be further heard before me at this sitting upon the master's report and upon the defendant's exceptions thereto, and thereupon, at the request of the parties, I reserve the cause upon the pleadings, the master's report and the exceptions thereto, and upon the motion of the defendants Dickey, Neal, Merritt, Rathvon and Knott that the Court direct the Master to hear all of the evidence relating to the Dittimore issue as raised by the pleadings in this case and in the case of Dittimore v. Dickey et al pending in this Court No. 30,738, the interlocutory decree denying said motion and the appeal therefrom, for the consideration of the Full Court."

There was a motion made to that effect before Mr. Justice Crosby and a long hearing was given. Justice Crosby overruled the motion, an appeal was duly taken and we think in order that the whole matter may be presented to the Court in all its phases that it should be included in the reservation. I understand that other attorneys, or at least the attorneys representing the plaintiffs, do not wish that included. In addition to that, I understand that the attorneys representing Mrs. Hulin desire that there be inserted words at the proper place "and upon appeal and exceptions of Emilie B. Hulin". In other words her motion to intervene. I understand, was overruled and an appeal was taken therefrom and exceptions. As to that we do not care to be heard, although we understand other attorneys do.

MR. THOMPSON: If your Honor please, Mr. Dittimore, of course, decidedly objects to it. I haven't had opportunity to see it. I asked for a copy a moment ago but never was furnished one. Your Honor is not going to reserve an act of discretion by Judge Crosby, which would mean sending back and reopening the whole matter before the Master and the giving of further testimony. It was purely a matter of discretion, not subject to any form of appeal and certainly would not be treated by a judge as a matter fit to be reserved for the Full Bench in the exercise of his discretion. But in any event I do not see how your Honor can reserve a decision of Judge Crosby as to the Hulin petition. We strongly object to it. It has no place in this reservation whatever. It was the act of another judge still, and cannot be included in this matter. It was also an act in his discretion, denying a petition to intervene. It is well settled that these matters are matters that are discretionary, whether to allow an intervenor to come in and on what terms, and I do not see how Judge DeCourcy could have reserved it had he been asked to do so. I still less see how your Honor can reserve an act of his. It seems to me if there could be a reservation of either one of these matters the first application ought to be made to Judge Crosby and the second to Judge DeCourcy and neither to your Honor. We decidedly object to the application to send back this case to hear more evidence in the Dittimore case. I don't know how your Honor could reserve it. I don't see what would be reserved in such a matter. Are you going to take all the arguments made before Judge DeCourcy and reserve those? The affidavits filed in that matter also and reserve those? I object to it. It seems to me it would not be of the slightest benefit and certainly ought not to be granted. There is a form which has been prepared with which I wholly concur, I think your Honor has a copy of it. Mr. Withington showed it to me.

THE COURT: I approved of that form.

MR. NASH: I would like to be heard with regard to including in the reservation the appeal and exceptions of Mrs. Hulin. Will your Honor take it up now?

THE COURT: Yes.

MR. NASH: Mrs. Hulin moved to intervene in the case of Eustace v. Dickey after the Master's report became public, as she was a First Member, and being a representative of a body of First Members some forty or fifty in number still living. The rea-

son that the motion to intervene was presented so late was that not until the Master's report had become known was it apparent that any contention was made by anybody with regard to the First Members. The Master in his report stated in stating the history of the Church Manual, that the First Members from the beginning throughout a period of years were the only voting members and that they discharged a very important function together with the Board of Directors. Then he recites certain votes by which he stated they had attempted to part with their authority and he indicates a doubt whether such attempt was perfected. In a later part of his report he stated that they had lost their rights by acquiescence. In that case, accordingly, behind the backs of the First Members, they having had no right to appear and be heard in a body, questions are raised upon which the Full Court may pass which may, in certain aspects of the case be of the greatest importance, that is, whether or not the First Members have any rights left as distinct from the other ordinary members of the Church, or whether all of their rights have passed to the Board of Directors. That question ought not to be foreclosed by a decision of the Court without the members—the First Members having a right to be heard. For that reason they moved to intervene and they contended before Judge DeCourcy that their application was not addressed to his discretion but was a matter of right, and that is the question which it seems to us at some time they feel they should bring to the attention of the Full Court.

Furthermore, the question is not being agitated in the bill in equity which the Directors have brought against the trustees. The trustees have answered setting up that the Directors have not the disposition of the funds payable by the Trustees to the Church under the directions of the Manual, because the Trust Deed provides that the Directors together with the First Members shall have the disposition of them. They are allegation of importance in the case of the trustees, with regard to the First Members. At some time the Court will be called upon to decide, and decide, definitively, whether the First Members still exist, or whether, in the language of Mr. Krauthoff, they are a mere ghost. It seems to me most fitting to bring up that question, so that then all these questions in the Eustace v. Dickey case, including the Master's report which deals specifically on many pages with the First Members, is reserved and reported it can all come before the Full Court.

It would be extremely unfortunate to have the Master's report go up upon a reservation leaving open our appeal and exceptions in which we contend that as a matter of right our application should first be passed upon. The exceptions are very simple. The exceptions raise the same point as the appeal but are made in that form also simply to bring in the affidavits which were filed. The bill of exceptions simply stated that the motion was made and heard upon affidavits which your Honor filed and which makes the affidavits a part of the exceptions.

MR. WITHINGTON: If your Honor please, this contention by Mr. Nash as to the capacity in which Mrs. Hulin claims certain rights is a contention which was not the original contention of Mrs. Hulin. It was no where alleged in her original petition for intervention that she claimed any rights as a First Member, or that she was bringing the bill in behalf of the First Members. The original petition specifically stated that she was bringing the bill in behalf of the members of The Mother Church for Christian Scientists generally. That petition was slightly altered by another and more general allegation at the time the matter was taken up for hearing, when it was argued before Judge DeCourcy. It was argued just as the matter was argued by the Attorney General before Your Honor, as to the question of newly discovered evidence. Now Mr. Nash has already filed a bill of exceptions in regard to the Hulin petition. If there is to be made a contention as he suggests, an important contention which he thinks is a part of Eustace v. Dickey, that matter should be presented in no other way than by a bill of exceptions which plainly must go to Mr. Justice DeCourcy. As Mr. Thompson has pointed out, I cannot see the propriety in reserving first a decision as matter of discretion by Mr. Justice Crosby, and secondly a matter of the Hulin petition determined as a matter of discretion and argued as to matters of newly discovered evidence before Mr. Justice DeCourcy, as a part of proceedings which purely and simply, as your Honor pointed out in the proceedings in which the Attorney General tried to intervene, as to the propriety of the dismissal of Mr. Rowlands. Now if that question is ultimately decided in favor of Mr. Rowlands on any one of a number of grounds found by Judge Dodge in his report, the question of First Members would not enter into it in the slightest, even though Mr. Nash, as he has set forth he does claim, the petition is one for the rights of First Members. It seems to me we are trying to argue and do the very things we have been fighting against all through this Eustace case, and that is, to prevent its being encumbered by side issues, in order to present to the Supreme Court the sole issue involved there—

the issue of the right of one Board to discharge a member of another Board, and unless we can by one reservation do that it is going to prevent the due, orderly consideration of the issues presented in that suit by Judge Dodge's report.

MR. THOMPSON: Just one correction. Mr. Nash said Mrs. Hulin's intervention was as a First Member. In her motion she described herself as a member. She distinctly stated that that was her capacity, that it was in that capacity and not as a First Member that she desired to intervene. Then they filed an amendment to their petition and I called attention to the allegation in the motion and asked if it was to be regarded as controlling the proceedings that she sought to intervene as a member. Mr. Choate stated in open court that it was to be so regarded and the Court stated he so regarded it. That she attempted to intervene as a First Member is utterly erroneous and as is stated, the Master finds and states in his report they tried as far as they could to wipe themselves out but whether they succeeded in doing it or not he did not pass upon. He said they appeared to eliminate themselves, but that he did not attempt to decide as to the relative powers of the two Boards, if so I might call them—First Members and Directors. Mr. Nash is wrong on two of his premises, on which he bases his argument. I can only repeat I think to encumber our case with this collateral matter, counter affidavits before other Judges, would be to do what the other side and various persons apparently interested in this case have been trying to do from the start, to confuse it, cumber it, and blur the simple issues which are now fortunately nearer to a decision, or nearly ready for decision.

MR. NASH: If the Court please, Mr. Thompson forgets to state that the intervening petition both as originally filed and as amended, sets forth at length Mrs. Hulin's position as a First Member and that both the brief and the argument which were made before Mr. Justice DeCourcy relied strongly upon her position as a member of that class.

MR. THOMPSON: I can only say that statement is without foundation in fact except the first part which led me to make my comment in order to get Mr. Choate to make his explicit statement as to whether he relied upon her as a First Member or not.

MR. DAWSON: If I may be heard in support of Mrs. Hulin's petition, one or two things have occurred to me that Mr. Nash has not mentioned. In the first place as regarding whether or not Mrs. Hulin attempted to intervene as a First Member and is represented as a First Member. Very obviously that is a matter the Court will have no difficulty about deciding,

for our appeal is before the Court and it will not rest merely on statements of counsel. In the second place, if I am not mistaken, your Honor, there is involved in the Eustace case in addition to the main issue as to whether or not Mr. Rowlands has been removed properly, the issue as to whether the Board of Directors have the power to remove at all. That involves a construction of this Deed of Trust, a construction which has directly to do with the question as to whether power is reserved to the First Members together with the Board of Directors or whether the change attempted to be made in the Manual which transferred that power entirely to the Board of Directors, is a good change or not. The next question before the Court, as I recall it, is a general prayer for instructions of the Court concerning the duties of the Trustees under the Deed of Trust with special reference to what, if any, power the Board of Directors may have in regard to supervision or direction. I take it these questions also ought to be finally decided in this proceeding. If all the parties are here who could be bound, if I accurately and correctly understood your Honor's intimation, when the Attorney General's application for permission to intervene was before you, it was that very probably it might be necessary for the Attorney General to be made a party so that this litigation might determine such matters as I have mentioned, and this Church might be bound. Is it not true, likewise, your Honor, that if it becomes necessary in the course of the final determination and construction of that Deed of Trust in order to give instructions to this Board of Trustees concerning their duties and to this Board of Directors concerning its power and its limitations, to construe these two or three passages in that Trust Deed that refer to First Members, proceeding upon this Master's report which likewise I do not wish to characterize, you will have it there in full, where there are references again to the First Members and as to the possibilities that they may have relinquished their rights—would it not be a very satisfactory position for the Court at that time, by reason of having our appeal there at the same time, to be able to determine these matters at once. I might call your attention to the fact without any impropriety, I think, that after the Eustace case has been decided it wouldn't be of very much use to present this appeal at that time; to attempt to present Mrs. Hulin's case upon such terms as this court might then specify, which might not, of course, include at all permission to introduce new evidence, it seemed to us would have many advantages. If, for instance, in connection with her appeal there were any rights which

the Court could get by representations of counsel concerning these matters, it would not be unwelcome to the Court. It seemed to us likewise if the Court decided her appeal and decided it favorably to her intervention, it might if it chose conclude that the new evidence we proposed to offer was of no great importance to the determination of this case, and would determine it as it stood. In any event, if there is fairly heard, as it ought to be, by this Court, you cannot help being in a better position to conclude all parts of it.

THE COURT: It occurred to me after Mr. Nash had spoken, or perhaps before, that it is true that the position of the First Members is of great importance in the determination of this case. It is true, as the master finds, that the validity of the election and the validity of the right of the Board to remove at any time may turn upon the relation which the First Members now bear towards the Board of Directors. If it shall happen that the First Members are still a voting body who hold concurrent power with the Board of Directors, it is quite clear that the Board of Directors cannot act without them. That must be so. Like any other trust which has joint Trustees. The difficulty I have doubt about in the reservation as far as it goes, is this: The First Members in this case have not asked one single member, he, or she hasn't been refused the right to intervent taking the situation as it was when she sought to intervene.

MR. DAWSON: Might I ask there, your Honor, whether it is a condition which the Court can upon hearing our appeal impose—

THE COURT: I do not think so. I think this situation might happen at present. I think if the intervenor, proposing intervenor, should waive all rights in the matter other than to become a party to the proceedings as they now are, you might be permitted properly to attend and participate in the deliberations before the Full Court. But if it involves any possible re-hearing it would be futile to send the question up to the Full Court. It is like sending up an appeal while there is pending a bill of exceptions. This is the most important question of all.

MR. DAWSON: May I ask, for the following considerations are worth being taken into your consideration in connection with it. Our new evidence is so explicitly set forth in the affidavits, if the Court should be of the opinion that this new evidence was of prime importance to the Court in determining this very matter, would not the Court itself prefer then to send the case back to have that particular portion of the evidence taken and reported to the Court? That is the way in which the matter impresses us. We think it is of very great importance in determining the very issues to which

your Honor has already referred. We think the Court will believe so and on that account we would not like to make that waiver to withdraw. If after the Court has considered it, it should be found that the grounds of our appeal do admit us upon the terms and conditions—I haven't consulted with my associate counsel in Boston, but I think I am safe in saying on behalf of counsel, that we would accept the suggestion of the Court at that time.

THE COURT: May I interject another difficulty about the reservation—I say it with some hesitation. There is both a bill of exceptions, or will be when they are allowed, and an appeal. It is elementary law in this Commonwealth, as you doubtless know, that a bill of exceptions and an appeal may not go up at the same time.

MR. DAWSON: I did not know that, Sir.

THE COURT: We hope to have some legislation next year to correct that difficulty, but that is the present situation, so that if the case was reserved on the bill of exceptions and it went up and the exceptions were sustained, it would follow therefore that you could go up again at once on the appeal, but there is no possibility of joining the two.

MR. DAWSON: May I not ask this: it is obvious, is it not that the hearing on our bill of exceptions or appeal would be entirely futile if in the meantime this case had been decided by the court. On that account, is it not clear that our bill of exceptions, our appeal, should be heard before the case is so reserved. We were anxious to expedite matters by having it heard.

THE COURT: If I may think out loud, I think in the way the case was presented to Judge De Courcy, as I have heard it here, not from anything he said to me, I should have felt compelled to make the same ruling. I should have felt it was too late for intervention, if there were no other reason—and that is the only reason that occurs to me at the moment, because I feel the importance of the question. But I might well have said, if counsel had then said, and if the proposed intervenor had said, "We propose to stand merely as a party plaintiff, (or defendant as the case may be) accepting the situation as it is, and the master's report as it is, desiring only an opportunity to argue the question before the Full Court" I might have said I would permit intervention on that ground.

MR. DAWSON: Originally my own view of the matter was, that we would have been glad to have taken that position had not this evidence come to our attention at that time. The evidence was so important as to the organization of this Church and the appointment of this Board of Directors that we did not feel free to do it. I might say we fully appreciate the

peril of so doing, and the Court might take the position that we ought not to be permitted to go ahead, at that time, because we accepted this case in the state in which it was at the time of our motion to intervene. We feel that if your Honor has considered the master's report and taken the actual evidence that could be introduced you would be impressed with its necessity yourself, and you would feel that a commission should issue for its being taken.

THE COURT: Let me interrupt again. One thing is certain there is now pending a bill of exceptions, and with equal certainty I cannot allow—report or reserve with any propriety a bill of exceptions which my associates will disallow as not conforming to the rule.

MR. THOMPSON: May I make one further suggestion that may, as somebody says here, clarify the situation. As a matter of fact both the existence and importance of this evidence were denied by counter affidavits of great strength. It may well be that Judge Dodge's decision was partly on the fact that he didn't believe the evidence existed, and if it did it didn't have any such weight.

THE COURT: Thinking again out loud—if counsel should say they waive their exceptions and desire to join for the sake of the appeal before the Full Court and participate in the argument before the Full Court, for the protection of the rights of the First Members, I will reserve the question.

MR. NASH: May I suggest, if your Honor please, we would prefer to waive the appeal and go up on the exceptions, because the exceptions bring in the affidavits, or counter affidavits.

THE COURT: However that may be, it isn't anything I have anything to do with.

MR. NASH: I was about to say, your Honor might let this application for reservation to the Full Court stand for a day or two until we have opportunity to have Judge De Courcy pass upon the bill of exceptions, if there is no objection to their form by any of the parties, and I have heard none yet. We preferred to go up on exceptions because they take the affidavits with it.

MR. THOMPSON: I object strongly to anything may delay our case further.

THE COURT: I cannot disagree with you for the moment though I may do it later.

MR. THOMPSON: The apprehension expressed by counsel is without foundation. We would like to have him come in, we have always said we should, taking the case as it stood, and not trying to reopen on the facts. That is the whole controversy. We have no objection to his coming in now as amicus curiae, or anything of that kind.

THE COURT: Unless all of the First Members, forty or fifty in num-

ber shall be allowed to intervene and become parties, they are not jointly interested in this matter and how can they be bound in any way by your client.

MR. DAWSON: We think they are. They are the voting members of the organization—

THE COURT: It may be in the nature of a quasi corporation.

MR. DAWSON: If one member appears in a representative capacity, and there is no meeting of the First Members which indicates they are not willing—

THE COURT: I just read the petition for intervention, at least I read the first page of it. It is not a petition by a First Member who pretends to act in behalf of herself and all the other First Members. She asks as, "a member." If it turned out that she was also a First Member it wouldn't make the petition a petition to join other First Members who may see fit to come in, and so make the decree operative upon them as a class, would it?

MR. DAWSON: We thought it would.

THE COURT: Without being named in the bill at all?

MR. DAWSON: The entire petition, we thought, made it very clear.

THE COURT: That couldn't be so. I didn't think in a bill in equity anybody was bound who wasn't named either as a party plaintiff or defendant, except as they might be privy.

MR. DAWSON: We thought in her representative capacity—

THE COURT: I don't think you would accomplish anything, except in the way I suggested by your being permitted to advocate the rights of the First Members, by reason of the fact that one of the First Members was permitted to intervene for the purpose of prosecuting the appeal, and then the appeal not their own.

MR. WITHINGTON: It is so alleged in the petition, it says they would not be bound.

THE COURT: I am trying to make it so they might be. I am making a suggestion apparently right along the line you are thinking, that unless they are in the nature of a corporate body and unless they are made parties they could not be bound.

MR. WITHINGTON: That is just the reason we have never objected to the Attorney General coming in, but these attempts to come in by tid bits and argue the Eustace case is just the sort of a thing we are trying to prevent.

MR. KRAUTHOFF: On the hearing of the Hullin petition Mr. Justice De Courcy permitted me to file a formal objection as a member of the Mother Church to the intervention of Mrs. Hullin. If there is to be any reservation at your Honor's hands I assume that objection would go along with it.

THE COURT: It was, I take it, on the ground that by reason of the acts

of the Board of Directors, or Mrs. Eddy, or of the First Members themselves that the quasi official position which they held had ceased to exist.

MR. KRAUTHOFF: As members we are entitled to be heard on that. We would be transferred from one sovereignty to another, and we thought we had something to say about it. I suppose if there is anything reserved at your Honor's hands, that objection would be reserved also.

THE COURT: All I intended to do if I allowed them to come in would be, because they were interested in the Church as members, or because they were First Members of the Church they might then by force of the fact that they were named as parties appellant under the reservation, argue the questions which were presented in this appeal. They could come in more or less as amicus curiae—with greater powers than amicus curiae because they were named in the petition itself.

MR. KRAUTHOFF: If there is to be a reservation of any objections—the same question being brought up in the suit we brought—we would for sociability's sake, if for no other reason, like to go along in that capacity with the objection. In the case of Eustace v. Dickey we have taken the precaution of appealing from your Honor's order denying our right to file exceptions and recommit. From my acquaintance with Massachusetts practice, and since Mr. Whipple was on yesterday being educated at such a rate, I feel more free in confessing my own limitations in that particular. As I understand it, our appeal takes care of itself.

THE COURT: It does. The only point is this, as far as it may go in this particular case, I suppose you know as well as I do about it, if I do not reserve or report this question it will be my duty to pass upon the exceptions to the master's report and from decision as I make an appeal may be taken. To avoid that I am asked to reserve it without any decision whatever, leaving it to the Full Court to pass upon such matters. Now I shall not report any appeal (unless I change my mind) which I shall not have occasion to pass upon in the way in which an appeal might be taken from my decision.

MR. KRAUTHOFF: All we ask is if any appeals are reserved we would like to have ours reserved also.

THE COURT: That may be done. Is there anything further to be said as to the intervention.

MR. NASH: We have said all we care to say.

THE COURT: I do not think, then, as it stands, I can allow the motion. If the intervenor cares to take the case as it stands, both upon exceptions and appeal, as I said before I might permit the intervention, but if not for the purposes of this reservation the motion

is denied. Mr. Bates, I have lost in all this talk just what your position is.

MR. BATES: Your Honor—

THE COURT: Wait a moment. I will say as I said before if counsel see fit to stand in with the exceptions, accepting the situation as it is, then I shall permit him to do so, and he may offer that motion for consideration. Otherwise I deny the motion.

MR. BATES: Your Honor will recall that there were two cases, Eustace v. Dickey, and Dittmore v. Dickey. Your Honor has not heard much recently about Dittmore v. Dickey.

THE COURT: That is shelved, as I understand it.

MR. BATES: Mr. Dittmore was the Director who was removed. His removal had no relationship to the removal of Mr. Rowlands, but nevertheless the two removals came on the same day, and subsequently suits were brought, one by the Trustees to keep Mr. Rowlands as a Trustee and subsequently Mr. Dittmore brought his suit in order that he might be restored if possible as a Director. When the Eustace case was sent to the master it was sent to Judge Dodge and when the question came up on the second case, the Dittmore case which came up several days later, it was a matter of two or three weeks, as I recall it, it was suggested by Mr. Dittmore's counsel—a suggestion to which we all agreed—that this matter would also go to the same master because it would involve inquiries in regard to Christian Science and the Christian Science Church, The Mother Church in its relations, etc., and it was ordered under the rule in the second case that it should be heard with Eustace v. Dickey. I recall that counsel for Mr. Dittmore urged very strenuously that it was inconceivable that the master, having both these cases referred to him, could report on the Eustace case before he had first reported on the Dittmore case, or at least until he had heard the Dittmore case, because in the Eustace case the question was raised as to whether or not Mr. Dittmore was a Director at the time of the removal of Mr. Rowlands, or, at least, as to whether or not he was a Director at the time of the bringing of the bill, and therefore to be restrained. In the course of the hearings before the master one of Mr. Dittmore's counsel was taken sick and it became apparent that he would not be able to give attention to that case until along in the fall. It was then agreed that so far as possible the Eustace case should be completed before the master, and it was so completed, and the arguments were heard. It was contended during the time that counsel had waived the right to have the Dittmore case fully heard before any decision was rendered in the Eustace case, by reason of some things which had been said. That was strenuously denied by counsel and every effort was made to have the Dittmore

case heard, counsel alleging that matters relating to Mr. Dittmore's status, inasmuch as his suit had been brought to determine it, ought be heard in that suit when it was duly opened, and not in the Eustace case; that only evidence, therefore was being offered in the Eustace case which applied to both, that is, which applied to Mr. Rowlands' removal, but that evidence which applied to Mr. Dittmore—to the validity of his removal—was to be heard when his case was tried. We proceeded upon that theory, but Mr. Justice Dodge finally ruled, but not until after the hearings had been closed on the evidence, that he was going to decide the question of Mr. Dittmore's status so far as the Eustace case was concerned, at least, in the Eustace case, before he completed the Dittmore. We made every objection to it that we could avail ourselves of, and as we think in a proper way, and not having succeeded in getting an opportunity to present the evidence we desired to present in regard to Mr. Dittmore and the reasons for his removal, and by reason of that misunderstanding—we will call it such, at any rate not having had that opportunity—we ask this court to direct the master in view of the ruling and in view of the circumstances not to file his report in either case until he had completed the hearing in both. That motion was overruled by Mr. Justice Crosby, and it is that motion which we would like to have go up under the reservation and appeal from it.

THE COURT: Won't you read me now your proposed reservation—or what there is in it applicable to that.

MR. BATES: "And upon the motion of the defendants Dickey, Neal, Merritt, Rathvon and Knott that the Court direct the master to hear all the evidence relating to the Dittmore issue as raised by the pleadings in this case and in the case of Dittmore v. Dickey, et al. pending in this court Number 30,788, the interlocutory decree denying said motion and the appeal therefrom, for the consideration of the Full Court." We might like to present that situation to the Full Court it may not be necessary, but we would like to have the reservation such as to give us the opportunity of presenting it, if we should desire to do so. It being in the nature of an interlocutory decree, it seems to me in accordance with precedents and we have a right to have it included in the reservation.

THE COURT: In effect it presents the question as to whether or not the reservation is not a premature reservation, doesn't it?

MR. BATES: I consider the Full Court might say—

THE COURT: You say it was the understanding that the case should be so heard and that they should be

conjoined, so to speak. That is to say, if the case—upon the decision of the master in one case there should at the same time be a decision of the master in the other case which could be presented to a the single judge for consideration together, in turn together they would go to the Full Court, because they were so intermingled as to make it necessary.

MR. BATES: Yes.

THE COURT: So you say, in substance, in violation of that arrangement, one of these cases has been decided and that which alone would make it safe to have a determination upon it still remains unsafe. In other words, it is a statement that the full court would say that the reservation made was a premature reservation.

MR. BATES: I should assume the Supreme Court in a case of that character would delay its findings upon the Eustace case until after the master at least had reported on the other case and it had come before it also.

MR. THOMPSON: Of course if the things stated by Governor Bates were accurate the conclusion he draws might possibly follow logically from that premise. The trouble is, it is not accurate. We do not have to rely upon statements of counsel here for the truth about this matter. We need not go through in detail and take up each one of the statements and show where it is the old, old misunderstanding cropping out again, or misstatement. It is not necessary to reiterate it. It was dealt with by the master himself before Judge Crosby was called upon to deal with this motion. The master dealt with this identical motion and made findings of fact upon it which are continued in his report. So there is no question of prematureness which can possibly arise unless the court says that upon the findings of the master—not upon the merits of this case but upon the findings of the master, the master ruled wrongly as a matter of practice. I think if your Honor realized that when Governor Bates was speaking I don't think the question of prematureness would have arisen. What does the master say? It says "It is understood"—I suppose that means it was an understanding between all counsel, certainly it was understood by Mr. Dittmore's counsel by the master and we supposed by Governor Bates. It is found as a fact. "It is understood that further evidence remains to be heard in the case number 30,788, should the parties so desire upon such of the issues raised therein as remain open after the determination of those raised in the present case." That is understood—if your Honor please—an agreement of the parties. In spite of what Governor Bates says about a mistake. There wasn't any mistake at all; none whatever, until after it became apparent to the Governor and his clients of what the probable result of this matter was going to be. What does he say about

alleged injustice and surprise? This is the very same motion that was raised—the identical motion filed before Judge Crosby and supported by elaborate arguments which took all of one day. "In view of the above, I am unable to believe that said defendants can properly be said to have been taken by surprise as alleged in their motion or to believe that the reopening of the case at this stage would be fair to the other parties therein." That is found by the master. Then the master makes findings on two other matters.

THE COURT: That finding was before Judge Crosby?

MR. THOMPSON: It certainly was. Besides all that there were affidavits filed concerning this matter. The Governor had an opportunity to thrash out General Streeter's sickness which hadn't anything to do with it, and an opportunity to make all these partial statements which I think he sincerely believes, at any rate he keeps repeating them whenever he gets an opportunity so that I think he must believe them. But they are not true. They are erroneous and misleading. This whole matter was thrashed out before Judge Crosby and Judge Crosby denied it. It has been denied by the master, with findings of fact, and by Judge Crosby after affidavits and arguments, and it is a matter that cannot be reported or reserved. The Governor has an exception to these very rulings in the master's report. That can be reserved, of course, but as for reserving additional and outside matters, it is beyond and without any precedent. I ask your Honor to eliminate every reference to that motion before Judge Crosby from this report and give us a straightforward reservation of the points of law reserved in the Eustace case by the usual method of exceptions taken to the master's report based upon objections, which is the proper way for equity cases to go up.

THE COURT: I think the effect of allowing the motion suggested by Governor Bates would be to overrule the discretion which Judge Crosby has already exercised. The motion is denied. The reservation may be had upon the other basis. I will sign that reservation upon its being presented to me. The reservation is as follows:

RESERVATION

This cause came on to be heard before me on the Master's Report, the defendants' Exceptions thereto, and the plaintiffs' Motion that the Master's Report be confirmed, and at the request of all parties the case is now reserved and reported for the determination of the Full Court on the pleadings, the Master's Report, and the defendants' Exceptions thereto.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Arguments on Motions

BOSTON, Massachusetts — Justice Pierce of the Massachusetts Supreme Court May 4, 1920, heard arguments on motions in the case of Dickey et als. vs. Eustace et als. The official stenographer's report of the argument follows:

COMMONWEALTH OF
MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss.

IN EQUITY

THE FIRST CHURCH OF CHRIST,
SCIENTIST, IN BOSTON

v.

EUSTACE et als.

BEFORE MR. JUSTICE PIERCE

Boston, May 4, 1920.

MR. WHIPPLE: If your Honor please, the motions that we desire to present are not ex parte, but perhaps I better state what they are. Your Honor may remember that a bill has been filed by the Directors for the removal of the Trustees by legal proceedings in Court. In our answer besides answering to the merits, we have said that we thought the Attorney General and Mr. Dittmore were necessary parties. As the facts stand in the other suit Mr. Dittmore instead of Mrs. Knott is declared to be a director and so we thought Mr. Dittmore should be in and it is as Directors that the suit is brought since that to attempt the removal of the Trustees, based on some allegations with regard to the administration of the trust, and we thought profiting by our recent experience that the Attorney General might properly be made a party. Therefore I have notified Governor Bates that unless we could agree upon a time within which the plaintiffs should file their replication so as to set the case down promptly for a hearing, we should move to have the Court under the rule, limit the time for filing a replication so we could have a prompt hearing in this matter. While the Governor states that he is eager to have a prompt hearing he does not state in his correspondence when he will file his replication. As I remember it the process is returnable the first Monday in May, but we filed our answer before the return day so that we might get a prompt hearing. We should like to get this heard during the summer so it could go up on its merits in the autumn and we want to get it at the very earliest moment, get at it very promptly. We believe it is for the advantage of Christian Science generally to have these matters of controversy settled and we think that it is wise to put aside some other engagements in order to have that done. Those are the

three matters which we wanted to call your Honor's attention to at the proper time.

THE COURT: The first one is joinder of parties.

MR. WHIPPLE: Yes.

THE COURT: The second one is what?

MR. WHIPPLE: We want to join the Attorney General and Mr. Dittmore.

THE COURT: I say the first is the joinder of parties. The second is as to filing the replication, and what else?

MR. WHIPPLE: That is all; filing it so we could get a prompt hearing. As soon as the replication is filed we can then move to have it set down before your Honor or refer it to a master if it must go to a master. But we think that with all the matters which have been at least partially concluded by the first hearing that only matters that were not there determined should now be heard. We do not think the scope of such a hearing would be very broad if your Honor should feel that the issues that were heard by Judge Dodge so far as findings of fact are concerned, settled in his report should not be retried in this case. That is, the hearing on them should be suspended until they became res adjudicata by a decision in that case.

MR. BATES: May it please the Court, we do not object, if your Honor thinks it should be done, to having the Attorney General made a party. We do object to Mr. Dittmore being made a party. This is, as your Honor styled it the other day, unquestionable a de facto Board of Directors. It is the only Board that has been functioning for over a year, or the only ones who have attempted to act for over a year. They are the only ones recognized by the Church and the Church recognizes them without any dissent. Therefore it does not seem to us that Mr. Dittmore, who claims that he ought to be restored, should be made a party, particularly when he himself is not requesting it. The master's report I assume determined nothing until it has been confirmed by the Court. Therefore his findings, so far as they go, do not determine this question under the present state of the cases, and do not in any way make a reason why Mr. Dittmore should be made a party to this suit. Your Honor will recall that this suit is brought by a different set of parties from those that are now in the other suits. This suit is brought by the Church, the Board of Directors and the treasurer of the Church. Those are the parties. If the master's report was to be considered, it is simply for the purposes of the Eustace case, for the purpose of Mr. Whipple's restrain-

ing order that he desires to get, that they are to be restrained by reason of certain findings which the master makes but which are largely findings on matters of law, and his final findings on that question are unquestionably questions of law on the facts presented and therefore it is left absolutely for the determination of the Court. But even as far as he goes he does not go to the extent of finding that Mr. Dittmore is a director only for the purpose of that suit, that restraining order. That Mr. Dittmore and his counsel recognize, and that it does not in any wise determine his status; that his status cannot be determined in that suit where he is merely a co-defendant, as between himself and his co-defendants, is shown by the fact that they brought a suit which is pending in this court to restore him to his position. There are various other questions including the fact that in open court his counsel read a statement in which he admitted the power of the Directors and assented to it, a matter which has not yet gone before Judge Dodge in any way, shape, or manner, by reason of the peculiar circumstances under which that evidence was not received, but which will be received, as Judge Dodge admits and as Mr. Whipple must admit when the Dittmore case itself is tried before him, a trial which he has been anxious to have and which we have not yet succeeded in getting. So I say, I see no reason why Mr. Dittmore should be made a party in this suit. As to the time for filing the replication. Our position is this: We are I think more anxious if anything than Mr. Whipple to have these matters speedily determined. The issues in this case are not at all the issues in any of the other cases that have been brought. The issues are simply whether or not the Trustees have turned over the funds as they should have done under their trust deed; whether or not they are so conducting the trust as to jeopardize and to waste it, or whether they are conducting it properly. Mr. Whipple has filed with his accustomed talent a most ingenious and novel answer. There are more novelties in this answer than it has been my experience to find in any answer I ever saw. He is anxious to press this matter for immediate hearing, at least that we should file out replication so that we will be prevented from taking such action as we shall see fit in regard to his answer. I submit we should have proper time to examine this answer which covers something like thirty-two tolerably fine printed pages which relies on the pleadings in the other case, which relies on the master's reports which have not been

confirmed, instead of making his averments, and which also introduces matters which I think we shall have to go over and call your Honor's attention to, which is impertinent and immaterial and scandalous. We shall have to have time to examine that answer and see what our action shall be in regard to it; after we have determined our course in regard to that answer, if we should see fit then to join answer by filing a replication well and good. If we saw fit to do so we should then have to have the necessary time for obtaining our evidence, some of which comes from a long distance. And then the very nature of these allegations indicate that some of this evidence must come from England, some from California and some from other places. Your Honor will recall when we asked for an order of notice as to why injunction should not issue, we stated we should have to have evidence from England and while we cabled immediately we have not yet received it, so the matter cannot at least be forwarded any further or faster than we are endeavoring to forward it. But in view of the fact that we ought to have time to examine that answer and see what we shall do with regard to it, I trust no time will be set this morning for filing the replication. The order of notice, your Honor will recall, in the question of injunction is not returnable until the 11th of this month.

THE COURT: I refused to do other than issue the order of notice upon letter information which the petitioners had, and at least made the remark that if the motion was made to dissolve the injunction, if an ad interim injunction was issued, or a preliminary injunction, there wouldn't be any legal evidence to support the petitioner; therefore I refused to take action in this matter. I understand, so far as it may go, that the evidence was to be obtained, was then to be obtained from England, and that it has not yet arrived. Now before you say anything more, I am questioning a good deal as to whether or not this is the kind of action in which the Attorney General should be made a party defendant, unless at least he shall seek to be made such himself. It does not necessarily involve the moneys of the trust, if I may call it so, the charitable trust. It may concern only the handling of such moneys. That is to say, if the Trustees shall not be removed, he may be indifferent as to whether they are removed or not. I do not see why he should not stand indifferent as to that, if it then concerned only the question of the amount which should be transferred upon the accounting from the trustees to the treasurer under the Manual or the by-laws, or whatever it is. In other words, it is a pure question of a trust accounting as between the organization represented by the Board of Directors and the treasurer

and Trustees, the one having the duty of collection and the other the right to receive for certain purposes. It would seem to be all within that circumference. I thought the other day, subject to what information I could get at the moment, that it was rather elementary that where one of a Board had been removed in apparent, or rather with apparent authority and a new person appointed in the removed one's place, that the new Board was at least a de facto board and that the member who had been ousted only had rights of remedy in this court or some other court to be restored to the position from which he claims he was moved out. I still think that is the situation. That is ordinarily the case, in some respects like a public officer being removed, for instance a policeman or the City Treasurer, and the new person appointed in his place by the votes of those who have a right to appoint, providing they are acting legally, the person who is in office has the right to perform all the functions of that office until the Court shall say that the person who has been removed is improperly or illegally removed. That seems to be the situation. Therefore unless there is something more to be said on that, I do not think either the Attorney General or Mr. Dittmore ought to be made parties. Having disclosed my mind, I will hear what you have to say about it.

MR. WHIPPLE: As to the Attorney General we shall not press that matter. We have made these motions merely for the purpose of having the record so perfected that a decree will bind somebody and that questions of doubt shall not be brought up or left open. We do not care to urge the Attorney General to come in.

THE COURT: The question is whether or not he is a necessary party.

MR. WHIPPLE: Yes. In fact he is not and we do not care to press that matter. Probably your Honor is entirely right—I haven't felt very sure in regard to it, but we think—perhaps I may say aside from what has been said—that one of the greatest benefactors of the Christian Science Church some time ago wrote to the Attorney General requesting him to cause an investigation to be made of both these trusts and of their handling of the funds. Having been apprised of that and being a little impatient of the delay the Attorney General shows in replying to that request, we have written him and told him that we welcome such investigation of the finances of the Trustees by the authority of the Attorney General; that we will lay the administration of the trust, our accounts and every detail before him, or before expert examiners that he may appoint. We have urged him to appoint them. We have said if the Commonwealth does not appropriate any funds which can be used for expert examiners that the Attorney

General may select, and the Attorney General may select his own examiners, or accountants to make an examination, the trustees for the trust, if it has authority to do so as we do not doubt, will pay the expenses of those examiners. I have said to him personally in conversation that I should think he ought to do the same thing with the Directors, that he ought to make the same proposition to them that experts should go into an examination of their accounts and report to the Attorney General and that the Attorney General will then be in a position such as your Honor indicated when he attempted to intervene before, of conducting the litigation and examination upon his own responsibility for his own purposes as master of the litigation instead of attempting to intervene as your Honor characterized it, as a sort of fifth wheel, in pending litigation where he was necessarily taking sides with one or the other of the parties. That if he made an independent examination as he was asked to do two months ago by Mrs. Longyear, and based his proceedings in court on what he should find out to be the facts instead of hearsay reports or biased statements of the parties, he could then perform a useful service to the Commonwealth and to the administration of both trusts. I still have hopes he is going to do it, and I am encouraging him in every way I can. We would be glad to bring him in here. I cannot say to your Honor I think he is a necessary party, but I want him to have every possible opportunity to examine the administration of the trusts by the Trustees.

THE COURT: Perhaps I can help you a bit, if I say I have been in consultation with the Attorney General and have made the suggestion to him that if he does want to take steps he should fully satisfy himself of the entire situation and then proceed on broad lines and I understand that office is now undertaking to do just that thing.

MR. WHIPPLE: Instead of making his averments on private statements made to him by biased parties, let him make his careful investigation through his own investigators and he can file a bill that may amount to something which will clear up this situation. May I call your attention this further matter. The trust under which the Trustees of the Publishing Society are operating states that the funds which they pay over to the Church treasurer shall be used by the Church treasurer subject to the direction of the First Members in accordance with the rules laid down in the Manual. There are no rules in the Manual and the First Members are what your Honor can gather from the litigation that has been before you. Now there is a serious question in the minds of the Trustees when this has been called to their attention, as to what their responsibilities are with regard to following

and seeing that that fund is disposed of in accordance with the terms of the trust under which they are operating, and very likely we shall have to come before your Honor with a petition for instructions as to what shall be done in this disturbed state of things.

THE COURT: I suppose, Mr. Whipple, assuming that question is one that is material and going to be raised, and I have no doubt it is, it may be a proper subject for inquiry—the primary question, of course is as to the amount of the funds in the hands of the trustees in which the treasurer has no more than an ultimate interest as a distributor. Secondly, or primarily the question of the removal of this Board of Trustees. Should these things come together you want to be able to tell him that it becomes necessary to determine where the funds are to go to.

MR. WHIPPLE: The accounts are being made up and within a few days they will be a sum that ought to be paid over and we do not want to be in the position of holding it back from the Directors, from the Church on account of the doubt as to the proper disposition. Months ago we wrote to them and asked the Directors to inform us what the treasurer was doing with these funds and whether they were being applied to the purposes which Mrs. Eddy indicated they were to be applied to. They replied in effect that they did not think it was any of our concern.

THE COURT: Assuming the treasurer is to have the funds, I am now leaving out the members who have disappeared, supposing the Church members still were in existence as a body would it be any business of the Trustees as to what the treasurer was going to do with the funds?

MR. WHIPPLE: Probably not. We should not ask the Court then to seek to locate it, but the First Members not being there, or not acting or functioning in the matter and there being no rules of the Manual to guide us and the Directors being in position and as we believe spending money as they themselves admit very largely and lavishly in other enterprises—

MR. BATES: We admit nothing of the kind.

MR. WHIPPLE: We thought we might have some responsibility; if your Honor says we haven't, we would be very glad to know it.

THE COURT: I certainly do not say it.

MR. WHIPPLE: We shall put the question to your Honor and the Court will direct us, then we shall know what we are doing.

THE COURT: What you are saying as to the First Members goes to the very life of all this litigation and a decision of that question and it is involved in every question except Mr. Krauthoff's case, I think, is really decisive of all the questions.

MR. WHIPPLE: I am merely explaining to your Honor why we are

suggesting the Attorney General coming in to this litigation. We want to leave the door open so he can come in wherever he thinks he will be welcome, wherever he thinks he has a function to perform. But we will withdraw that motion on your Honor's intimation.

THE COURT: I think it will turn out that the Attorney General will come in by himself, if I may say that, after such a careful investigation as will insure the propriety of his position.

MR. WHIPPLE: We shall facilitate the examination of our trust.

THE COURT: I suggest he will carefully examine his questions to be sure he is right before he goes ahead, and have no mistake about it.

MR. WHIPPLE: We shall hope the Directors will give him the fullest opportunity to examine by expert accountants. This suggestion is made in the friendly hope of an associated Board, of course, but that is Governor Bates' business. We are not pressing it, so you need not be disturbed, Governor.

MR. BATES: I am not disturbed. I understood you had withdrawn your motion and I supposed you were through.

MR. WHIPPLE: I am through with the Attorney General. I am now going to speak about the Dittmore matter. Now as to that, your Honor, the Dittmore matter. I feel a good deal reassured by your Honor's suggestion as to the de facto Board of Directors. I must say that I had a little misgiving however as to what the situation will be if this suit—if the Full Court should decide that Mrs. Knott is not and never was a member of the Board of Directors. Something has been said about the Church recognizing this de facto Board. They haven't had any chance; they never have any chance to recognize or fall to.

MR. BATES: If you will bring in your correspondence you will find out.

MR. WHIPPLE: They put out Mr. Dittmore, waived him out and invited Mrs. Knott in, that is all there is to it. They simply do things and nobody remonstrates because they haven't a chance to, a good deal as we remember in olden times when we studied Caesar, I think it was, who said in his report "he created a devastation and called it peace." They do things and nobody dares to oppose them and they say everybody acquiesces. However, if your Honor thinks that Mr. Dittmore is not a necessary party to have a final decree that will bind him, we should not press that matter very much. The thing we do want to press is the matter your Honor hasn't yet touched on, and which we suppose you will speak of in a moment. But while I am on my feet, the particular reason we are urging it is this: Your Honor will remember that in the original bill we have a sweeping injunction which prevents these Directors from in any way interfering with

the administration of the affairs of the Publishing Society, or injuring the publications which were founded by Mrs. Eddy and which have been so wonderfully prosperous. We have reason to believe in some form of action we shall bring it to the attention of the Court, that that injunction has been violated again and again. That we have stated in the answer. Now one thing we complain of it that the Directors have permitted it to be understood and have given out word to the field that these organs were not the organs of the Church; that these publications were not the organs of the Church. That is a flagrant violation of the injunction as it stood and we charge them in the answer with having confederated together to put out into the field that feeling, and it is a thing that they succeeded in doing and which accomplished all the damage which has been accomplished to the publications. Now very ingeniously they have put into the bill the statement that these institutions founded by Mrs. Eddy, these publications created and inspired by her are not the organs of The Mother Church, thus confirming just what has been said insidiously as we charge by them and given inspiration throughout the field to their claim of a right to say in litigation that which they could not have said outside by the circulation of that charge before they filed the bill, and that authoritative statement has done untold injury to these institutions of Mrs. Eddy. Now then, their allegations are as baseless as their insidious propaganda that preceded it was unfounded and improper and we want to have a prompt hearing with regard to it; it is necessary to the proper preservation and prosperity of these great publications that were created by Mrs. Eddy. We should have a prompt hearing, we must have it in some form or other so that we can bring before the Court the disastrous results that these Directors have themselves brought on, on the basis of which they ask relief of the Publishing Society. Having dealt the Publishing Society as severe a blow as they could by their propaganda they ask the Court to turn around and remove the trustees because they see how seriously the Publishing Society has been hurt. I think it must be perfectly obvious to your Honor that we ought to have a prompt hearing with regard to these issues because every day of delay where these apparently authorized or authoritative statements are made by the Board of Directors on the Court records are liable to do more and more injury. We have succeeded in shaking it off materially, I am glad to say, but the responsibility of these Directors for what was being done before is a matter that we think ought to come to the attention of the Court not only upon the merits of the case but upon the question as to whether the mandates of this Court have been re-

spected by these Directors. We urge therefore that it may be set down for a prompt hearing. That is the basis of urging a prompt hearing. We would like to have it before the Court. We would like to have the time limited within which they shall file their replication. They should not have filed their bill with these charges in it until they were certain that the allegations preferred by them—until they were prepared to sustain their allegations. We are ready and we have been for some time. They should show less haste in filing their bill and more haste in preparation for trial. All we ask is as prompt a hearing as your Honor thinks we are entitled to get to clean up a situation the Directors themselves precipitated. It is not right for them to do this grievous injury and then say they are not ready to go ahead, and say they are "puzzled to know what to do with the answer; we have distant witnesses we must secure, and in the meantime you must suffer under the wrong we have done you and we can hold you in that way until we get ready to come into court and make good our assertions."

MR. BATES: I do not know, your Honor, as there is any occasion to reply to my brother except in a word, at least. He does not meet the issue. He has endeavored to fill your Honor's mind with arguments stating his position which he reiterates on every occasion where he has opportunity—

THE COURT: May I interrupt you a bit. I understand from what you said before that you had joined—of course you have the answer which is of very great length. I understood you to say that it contained matters which would be demurrable if this were an action at law, but being an answer to a bill in equity it would be impossible to demur to it but that you had raised the issues that would be presented by demurrer in some other form. So it may happen in this case that there is something more than a replication to be filed, or rather something less than a replication. The replication is putting at issue in this suit the bill and answer, whereas there may be a desire to set the matter down for a hearing on the bill and answer, or to have in some way what he calls the frivolous and scandalous matters removed from the answer before he will be called upon to join in a replication at all. Now I think as far as that matter goes, it ought to be speedily determined, so I suggest that some determination shall be had as to whether or not replication is to be filed and if not what steps are to be taken by way of relief from the answer by the 20th of this month.

MR. BATES: That will give us ample time.

THE COURT: To determine whether the bill and answer will be set down for hearing; that is one matter; if a replication is to be filed that is another matter. You have to take the

intermediate steps which hang upon the frivolities and scandalous matters.

MR. BATES: I think I ought to be allowed to add, in view of the statements made by brother Whipple, while I do not claim to have had the experience he has had, I do not endeavor to argue cases before the facts have been presented to the Court, and the matters with which he charges our clients are all matters which we shall satisfy the Court at the proper time are entirely without foundation and we shall also be able to show that the Directors have in every respect complied with the injunction of this court. We shall also, I think, satisfy the Court that what my brother fails to recognize is that he and his three trustees are alone in the Christian Science world and that the Church is a unit behind its Directors.

THE COURT: I suppose it might happen that the Court would send all the Board of Directors to jail for violation of the injunction and yet allow this proceeding to go on.

MR. BATES: That is just the point. It has nothing to do with the merits of this case and the answer is full of it.

THE COURT: There are two Boards that have to do with this charity. It might be that the Court might think one Board ought to be removed because it was improperly conducting itself and that the other Board ought to be punished for disobeying what the Court told it to do. That is not this case, however.

MR. WHIPPLE: We want to have the Governor have the opportunity to vindicate his clients right away. We don't want the Governor to have that opportunity postponed for a moment for vindicating his clients against these unjust claims.

THE COURT: Let it stand until the 20th of this month.

MR. WHIPPLE: I understand if the replication is to be filed it is to be filed by that day.

THE COURT: If some other steps are to be taken they are to be taken by then, or before that time.

The Clerk says you are to elect what you shall do on or before the 20th of May.

MR. BATES: May I just bring one other matter to your Honor's attention. Mr. Krauthoff and Mr. Whipple, who seems to be following Mr. Krauthoff's footsteps, have kept us very busy recently. Your Honor will recall there is an answer to be filed by all the parties to Mr. Krauthoff's bill as I understand it by the 7th of May. I also understand he has made three new persons parties and I assume they will have to file answers. I think the time expires on Friday of this week. My suggestion would be I think it would meet with the approval of the parties that that time be extended another week for filing the answers.

THE COURT: Does that meet your difficulties, Mr. Thompson?

MR. THOMPSON: I think it ought to be extended. The bill is the most extraordinary production I ever saw. I can answer it, but I would like more time for reflection; I think the more time we have the better we will be able—

THE COURT: The Court is not called upon to express any opinion. The time for filing the answers in the Krauthoff bill may be extended to the 20th also. That is the Full Court week, so I shall not be doing any business all that week.

MR. WHIPPLE: When shall we know what the Governor elects to do?

MR. BATES: By the 20th. If we elect to do anything before that we will advise you.

MR. WHIPPLE: Not to make the election.

THE COURT: He is to determine at that time followed by action, whether he shall demur—he cannot demur, but whether he shall file a replication which shall put the matter at issue, or whether he shall do some other thing, take some other step which would naturally precede the filing of a replication, or whether it is to be set down upon the bill and answer, or take any other action.

MR. WHIPPLE: Can the order be entered without a written motion? I think perhaps we should file a written motion.

THE COURT: Very well. I think it is a very good idea to do so in all matters, then when Judge DeCourcy comes on (and it looks as if he will have to hear some of these matters) he will have some knowledge of what has happened.

MR. WHIPPLE: We thought we did not need to file a written motion with regard to the Attorney General and Mr. Dittmore being brought in. It is in the answer; we suggest it in the answer.

THE COURT: The motion to join the Attorney General and Mr. Dittmore as parties defendant is denied.

MR. WHIPPLE: Does your Honor think that should be a separate written motion or will what we have in the answer do?

THE COURT: I think it ought to be a separate written motion; that would be much better.

MR. WHIPPLE: We will prepare it, and also prepare a motion that the plaintiff should be required to file a replication or other pleadings on or before the 20th of this month.

MR. THOMPSON: What did your Honor say about filing the answers in the Krauthoff case?

THE COURT: I made that for the 20th also. That is what I asked you, if that would be satisfactory to you and you said it would.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Hearing on Motion to Extend Injunction

BOSTON, Massachusetts — Hearing of the motion to show cause why a temporary injunction should not be granted against Fred A. Bangs, James A. Hemingway, and Arthur S. Fosbery was postponed Tuesday, April 20, 1920, by Justice Pierce of the Supreme Judicial Court of Massachusetts for two weeks.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. IN EQUITY
EUSTACE ET AL. v. HARNEY ET AL.
BEFORE MR. JUSTICE PIERCE

Boston, April 20, 1920.

MR. WHIPPLE: In this case, if your Honor please, we are here on the return of an order of notice to show cause why a certain injunction brought should not be granted. Service was made upon one of the additional defendants, but by reason of the press of matters at the sheriff's office just at this time they did not serve upon the other two defendants. We did, however, cause service to be made of a summons to come to court as a witness, because we shall need their evidence, we propose to interrogate them on the subject of their activities, and we understand that all three of the defendants are present in court—both the one who was served on the order of notice and those who are also summoned as witnesses. I see gentlemen whose faces are familiar in this Christian Science litigation and some new faces among the members of the bar who, I am informed, represent these gentlemen who have not been served on; if they will enter their appearance in behalf of the two gentlemen who have not actually been served on, it would save us having service made by the sheriff by asking him to come up for service. I understand that Mr. Fosbery and Mr. Hemenway are the two who have not been served on and Mr. Bangs has been served on, but they are all here.

THE COURT: Does anybody represent these two men?

MR. MORSE: Judge Chase and I represent the defendant who has been served upon. I want to state to the Court that although Col. Bangs, the defendant who has been served upon

and whom we represent, although he was in town for a number of days last week and his whereabouts were well known, no service was made upon him until very late on Saturday, so late that his counsel have not had opportunity to thoroughly examine this bill and go over it with Col. Bangs and form just such a conclusion as we think we ought to form before making any definite statement to the Court. With reference to this suggestion, Mr. Whipple, I think perhaps I might inquire of you if you desire to proceed with the hearing now?

MR. WHIPPLE: We are all ready to proceed, but we do not wish to press it against the wish of counsel who say they are not prepared to go on.

THE COURT: I take it that this is the situation, is it not? The burden is upon the respondents in a notice of this kind, to show cause why—not upon the other side—and as I understand what has been said, they are not quite ready to show cause one way or another this morning.

MR. CHASE: We haven't read the bill.

THE COURT: I say you are not quite ready.

MR. CHASE: Not at this moment.

THE COURT: So service can be made comfortably and the matter can be taken up to-morrow or Thursday?

MR. WHIPPLE: We would like to go on, but I cannot promise to arrange that appearances be entered for the gentlemen here—

THE COURT: No one appears to represent them, that is why I asked the question.

MR. CHASE: We represent Mr. Bangs, the one who has been served on.

THE COURT: I am speaking simply of the men who haven't been served. Apparently there is no attorney representing them.

MR. NASH: In regard to that matter, Mr. Fosbery is in court. I am acquainted with him and he has spoken to me about the case. Mr. Robert G. Dodge represents the defendants in this new suit which Mr. Whipple has brought. Mr. Dodge being engaged in an assignment this morning has not been able to see his client and would like a reasonable postponement.

THE COURT: That is only on the assumption that Mr. Dodge appears for them. If he shall enter his appearance for them so there shall be

a general appearance the Court may grant it; if he does not, I cannot make any order for them whatsoever; they are not before me.

MR. WHIPPLE: I think either of these gentlemen, if they wanted to, could enter appearances pro se. Well, never mind. May we suspend for a moment. The sheriff has the processes and Mr. Withington will step down and have him come up.

THE COURT: We will suspend this matter for a few moments.

MR. NASH: I have succeeded in introducing Mr. Fosbery to Mr. Robert G. Dodge. Mr. Dodge has entered his general appearance for Mr. Fosbery and he would like to have the matter stand until he has an opportunity to see his client and inform himself about the case and would like to cooperate with Judge Chase and Mr. Morse.

THE COURT: When do you desire to have the case go over to?

It would be better not to come upon a Tuesday or Friday, but upon any other day counsel can agree to; I think it would be better to give you a free day.

MR. NASH: Mr. Dodge would like to have it come on at some time convenient to Mr. Morse and Judge Chase.

THE COURT: Mr. Morse, when would it be convenient for you?

MR. MORSE: First I would suggest that we examine the bill sufficiently to acquaint Mr. Hemenway, the respondent who is not served on—he has authorized us to appear for him.

THE COURT: So all the parties are now before the Court?

MR. MORSE: I really do not know just what to state about these respondents. One is a lawyer in Chicago and has a very important and pressing engagement. He did not expect to be quite so interrupted this morning, and in regard to that—

MR. CHASE: I would like to confer with him.

THE COURT: Will you also confer with Mr. Whipple afterwards in order that he can agree upon a day certain?

MR. CHASE: We will endeavor to.

MR. WHIPPLE: I would suggest, your Honor, Thursday. I mean if they find that they cannot deal with the issue today.

THE COURT: Let it be fixed for Thursday.

MR. WHIPPLE: Thursday nisi, be-

cause if you will notify me this afternoon or to-morrow that you cannot go on on Thursday and the Court can give us another day, that will be acceptable.

MR. CHASE: May we not confer with Mr. Bangs for a moment.

MR. MORSE: It is largely a matter of his own professional engagements.

MR. WHIPPLE: We have summoned a considerable number of witnesses to testify. I was wondering if counsel could at some time consider whether we could have these witnesses here again without another summons; if not, why, we should like to contribute to their witnesses' fee for the next hearing as soon as it has been fixed. Perhaps we better do that before the case is adjourned.

THE COURT: Confer with Judge Chase and Mr. Morse?

MR. WHIPPLE: Perhaps their own clients would come in without further summons. I understand as far as Judge Smith and the Directors are concerned, they will come in without further summons; that is stated by their counsel, but the fees better stay as they are.

[At this point the hearing was suspended to give opportunity for counsel to confer.]

MR. CHASE: Our client, Col. Bangs, says if the Court could give him a hearing this afternoon or to-morrow he can arrange to stay over; if that cannot be done he would very much like to have the matter go over for two weeks.

THE COURT: There is no reason why, if the parties can agree, there shouldn't be a hearing this afternoon.

MR. WHIPPLE: That is agreeable to us, if your Honor please. But how about Mr. Dodge?

MR. CHASE: I have the information that was given to the Court. He is at present engaged and cannot see his client until after four o'clock.

THE COURT: I do not think I shall take it up after four o'clock.

MR. WHIPPLE: Will Mr. Dodge be ready to-morrow?

THE COURT: I will take the case up to-morrow morning at nine or half past if the parties desire. I will take it up at two this afternoon if the parties can get together.

MR. WHIPPLE: Either hour is agreeable to us.

THE COURT: I think I can say I will not take it up after four o'clock.

MR. CHASE: As I say, I have no knowledge with reference to Mr. Dodge except what was given to the Court.

THE COURT: Has Mr. Nash gone out? I suppose communication could be had with Mr. Dodge. Mr. Dodge, I presume, can find out between now and to-morrow morning. It may be left to the parties to agree with Mr. Dodge and his client for two o'clock this afternoon, and I will hold myself ready to be called; if not, the case may stand until to-morrow morning at half past nine.

MR. WHIPPLE: I understand the adjournment may be regarded as until half past nine to-morrow morning unless the parties by agreement can get together and come in this afternoon.

THE COURT: At two o'clock this afternoon.

MR. WHIPPLE: Now may I call attention to what a gentleman who is here and who was summoned from the Western Union Telegraph Company, desires to say. We have asked him to bring quite a large lot of telegrams or copies of telegrams which we think will have a bearing upon the issues. It is true that we served on him quite late on Saturday and he hasn't been able to come prepared this morning with copies of despatches sent out and received except since the first of April. He informs us that since that time most of the telegrams that we seek to lay before the Court have been sent out by the other telegraph company—the Postal Telegraph Company. That gentleman, the representative of that company—we haven't been able to get here this morning. We have asked to have copies of telegrams passing, of a certain nature and description, as far back as November. Mr. Crane, who is the gentleman who is summoned, says that his company would not like to furnish as comprehensive a set of telegrams as that without some direction of the Court, or something to indicate that they would be justified or warranted in bringing them in. I have said to him that the subpoena would seem to be that justification, a subpoena duces tecum, that the Court would dispose of the matter when it was brought into court; the Court, generally speaking does not like to trouble itself with what should be brought before it, but rather deals with the question as to how it should be dealt with when it is before it.

THE COURT: Except in rare instances where the Court would say that such subpoena for a period of time covered was unreasonable, so that if the person summoned refused to produce the Court would excuse. Of course that is in anticipation of such a result. I have known of such instances, but it would not seem, at first blush, that telegrams reaching back no further than November, were too remote, but it may be that they are.

MR. WHIPPLE: I think Mr. Crane does not want any formal order, he would like—

THE COURT: The court cannot make any that I know of.

MR. WHIPPLE: On the other hand I do not think he wants to take the risk of its being dealt with by the Court if he did not act under the summons.

MR. CRANE: Our company does take the stand that they should not produce confidential correspondence of this kind without a written order of the Court, and they have asked me to so state this morning.

THE COURT: I think it is the duty of anybody summoned to bring such documents as they have or have the parties against whom such documents militate, appeal to the Court against their use when produced. It cannot be otherwise. There isn't any such thing as confidential communications by telegraph, in law.

MR. WHIPPLE: Unless we are informed to the contrary, we will meet at half past nine and go forward.

MR. CHASE: If we get word from Mr. Dodge may we see your Honor later in the day about it?

MR. WHIPPLE: I take it you will assume to see Mr. Dodge and let me know.

THE COURT: That should be done.

MR. CHASE: I will try to see him.

MR. WHIPPLE: If you want me to I will see him and I will arrange it, but as he represents co-defendants I think you would rather do it. I only want to know whose responsibility it is to see him and arrange for this afternoon.

THE COURT: It looks to me as if they stood indifferent.

MR. WHIPPLE: I am, if your Honor please, but will be ready if notified sufficiently in advance, at two o'clock.

THE COURT: We will take a recess until two o'clock, and if counsel are ready to go on at that time we will proceed, otherwise we will take the matter up at half past nine to-morrow morning.

Further argument was heard before Justice Pierce in chambers, as follows:

COMMONWEALTH OF
MASSACHUSETTS.
Supreme Judicial Court.
Suffolk, ss. In Equity.
No. 32,697.

EUSTACE ET AL
v.
HARNEY ET AL.
SUPPLEMENTAL BILL.

Hearing before Pierce, J., in Chambers, on Order to Show Cause.
Appearances:—

Sherman L. Whipple, and Lothrop Withington, Esqrs., Counsel for Complainants.
Messrs. Storey, Thorndike, Palmer & Dodge (Robert G. Dodge, Esq.), Counsel for Respondent Arthur F. Fosbery, and Others.
Hon. Frederic H. Chase and Hon. William A. Morse, Counsel for Respondents, James A. Hemingway and Frederick A. Bangs.

Court House, Boston, Mass.
April 20, 1920, 11.30 A. M.
Mr. CHASE. Mr. Dodge is here now, your Honor.
Mr. DODGE. My suggestion has been, your Honor, that this matter be

heard on Thursday, May 6, which is two weeks from Thursday. I suggested that date (although Thursday of next week would have been equally convenient for me) because Mr. Morse has the Dukes County—or rather the County of Dukes county trial list on his hands.

The COURT. I am glad that you are accurate in your statement! Judge Braley is not here, but if he were he certainly would have taken you up if you had made that little slip!

Mr. DODGE. If next week is to be eliminated, Thursday, the 6th of May, is the first date that I did not have actually assigned for the trial of another case.

The COURT. Judge Chase, how will that be for your client?

Mr. CHASE. That is perfectly agreeable to us.

Mr. WHIPPLE. If any way can be provided to get an earlier consideration of this matter, we urge it strongly. I have not adverted to this feature of the case as to which I am about to speak, although I think that from what your Honor has observed it must perhaps have been in your Honor's mind: When this bill was filed, the original bill, an allegation was made that the defendant directors did not intend to apply to the court to remove the trustees, but that they intended, by the exercise of the powers which rested in them as directors, to make it so difficult for the trustees to handle their business, by injuring their business, that the trustees would find themselves in an untenable position; and upon that representation an ex parte injunction was issued to prevent that very thing. There has been no serious attempt to qualify or modify that injunction, but it was promptly violated by the directors and by their counsel, Judge Smith, and upon their being summoned into court the directors were each of them fined, with a single exception, because he did not happen to be present, and Judge Smith, their adviser, was fined double the amount that the directors were fined. Since then, and especially since the Master's report, there has been a studied purpose exhibited by people acting either with the approval of the directors and at their instigation, or at least with the directors' full knowledge, and with no attempt on the part of the directors to check them, but with their evident approval, to do those things which the directors were forbidden to do.

Now, the court's injunction was not to prevent the directors from doing anything in particular so much as it was to prevent the things being done by anybody. The court, I take it, issued its injunction to prevent the things being done which ought not to be done, and the injunction was served on the directors, and they were named, because they were the people who were most likely to do them. But now we shall be able to show, by means of the copies of telegrams which have been sent, a wide-

spread and definite purpose on the part of these few individuals who have been propagandizing the principal centers of Christian Science, stirring them up by the most scandalous representations to do the very things which this court has forbidden to be done. In the resolutions which they have got, adopted by certain churches, the resolution itself has been stated to be for the purpose of making the trustees get out of their positions. They have said, "If you cancel your subscriptions to these different periodicals, you will then be able to effectuate what we want to accomplish, because the trustees, when they find that the business is being ruined, will get out"—as plain a defiance on the part of these people of the order of the courts of this commonwealth as could be; they stating, as is alleged in the bill, "The directors affected by the injunction cannot do it, but we are not served with the injunction, we are not under the injunction, and we can do it." We shall be able to show with regard to these very defendants, who have been some of the chief propagandists, who have gone about from church to church in order to incite them to do something to help the directors and to injure the trustees, that they have been doing these very things.

Now, it is necessary for us, as soon as we can, to see that the judgment of the court, which is foreshadowed to be in our favor by this Master's report, shall not be rendered nugatory by the efforts of these people outside, who we do not say are inspired by the directors, but who are acting with the silent approval of the directors.

We are prepared now to show your Honor very fully the things that have been done by these three individuals along these particular lines. We can show it not only from their own statements, but we can show it by competent evidence, and we think that that ought to come to your Honor's knowledge as promptly as possible.

Therefore we were ready to go on this morning, and we were ready to go on at two o'clock, and we are ready to go on tomorrow morning, but we said, because you will remember Judge Chase said that he had not even read the bill, which was an inadvertence. I think, because the Judge did run his eye over the bill on Saturday. I think—did you not?—

Mr. CHASE. Yes, but I did not read it. I had only ten minutes in which to glance over it.

Mr. WHIPPLE. That is right.

Mr. CHASE. I think that your officer will bear me out in this statement, that service was not made until quarter of twelve.

Mr. WHIPPLE. Yes, I think that that is so; but we would have given you a copy of the bill.

Mr. CHASE. I have not even read it now. I have read the supplement,

but I have not read the original bill, to which we were not a party.

Mr. WHIPPLE. That is right. Now, I do not want to hurry the thing; I want all the gentlemen to have a perfectly adequate time to consider it, because I think that the issue is a serious one, and it is an important one to their clients, as it is to ours, but we do deprecate its going over for two weeks before this matter is called to the attention of the court. We would like, our clients would like, and I should think that Christian Scientists generally would like, to have this thing focussed earlier, to have a full hearing before your Honor, and have the evidence presented along the lines indicated in our bill, if it is possible. And therefore I said, without conferring with your Honor, that we could not consent to a postponement for this length of time without an effort to get an earlier day. I do not want to press the matter so that it will be a personal inconvenience to any of these gentlemen, or to press it before they have time to study the situation, but it seemed to me that Thursday morning would probably be sufficient. It is not so complicated that they could not learn a good deal about it by then; but, if that is too short a time, and your Honor cannot very well take it up on Friday, we should like very much to go on with it next Monday. However, we submit ourselves to your Honor's direction, in confidence that you will do what is the best thing to be done not only for this small branch of this litigation, but for the entire situation. Serious harm has been done to the affairs of the Publishing Society. The very harm that the original injunction sought to restrain has been done in large measure. Of course it is a harm that results to the church, because all that the trustees make in their business they turn over to the treasurer of the church. It is a harm that has been done to the church because institutions which were founded and inspired by Mrs. Eddy are suffering serious harm from these people who are doing what seemed to us a reckless and unthinkable thing in attempting to destroy the institutions which were inspired by Mrs. Eddy, to whom they look for guidance as to a divine person. If they are inspired by Mrs. Eddy, they have a divine inspiration, and still these men are acting for the purpose of overthrowing them. But still it is the duty of these trustees, in the performance of their trust, to attempt to prevent that, to attempt to see that the thing that this court said by its original injunction should not be done is not done by the directors or anybody else. And there are a comparatively limited number of these propagandists who go out upon this mission from Boston, or after communications from Boston, and who tell their audiences that while the directors cannot say that they approve it,

on account of the injunction which forbids their doing so, they know from personal conference with the directors that it is pleasing to the directors that it should be done; and we know with regard to two of these men, Bangs and Hemingway, who are both lawyers, and who know what they are doing, and who come on here from Chicago, that after the Chicago churches had refused to pass resolutions cancelling their subscriptions to these periodicals, Mr. Neal, one of the directors, and Judge Smith, their counsel, went to Chicago, and stayed there, and then this meeting was called that was presided over by Bangs, Hemingway cooperating. In which the resolutions the other way were passed, and then Neal and Judge Smith came home. We can bring those facts to your Honor's attention. And either one or the other thing is true,—either these men against whom we seek an injunction are carrying on this propaganda in violation of the wishes of the directors, and thus harming the church and the church interests and the Publishing Society, against the wishes of the directors—and in that case they ought to be stopped; or, if they are doing it in accordance with the wishes of the directors, they are doing it in violation of the injunction already outstanding; and of course their testimony will show which is the fact,—whether they are doing it with the approval of the directors, or whether they are doing it without the approval of the directors. But the harm itself we think that we have a right to be protected against.

Now I ask, in view of that, which I have stated frankly to counsel, though not at quite such length as I have before your Honor, that if they cannot meet before then, if your Honor could give us next Monday to have a hearing with regard to this whole matter, or with regard to the whole issue that is here contained, as to whether these gentlemen ought to be enjoined from doing the same things that the directors are enjoined from doing?

Mr. CHASE. May I say a word before your Honor passes upon this? I cannot think that what Mr. Whipple has said at such length can be meant by him to apply in its entirety to the respondents that Mr. Morse and I represent. Whatever they have done is to be placed before your Honor. They are members of this church, and they have acted in certain respects as they thought to be their duty and in accordance with their religion. However that may be, that is not the question that is now before your Honor. What I have to say briefly is with respect to their personal convenience, which up to this time has not been consulted in the slightest degree; and they may have reason to complain of the hospitality which has been extended to them in Boston, to which they are strangers. I understand, from the best authority, that their footsteps have been dogged possibly

all the way from Chicago, and I have no doubt that my brother is fully advised as to every act which they have committed in this city, and that your Honor will, either from him or from us, receive full evidence in that respect. However that may be, they are two gentlemen of responsibility and of standing in the community in which they live. They had made arrangements, after consulting public officials, to pursue their own business, and we think that they have some right to do that. They have been restrained from doing so, and they cancelled their engagements in that respect, and are here today at great inconvenience. I think that if the case is to go off they ought to be permitted to go to Chicago and resume, one of them, the practice of his profession—I understand that he has very pressing engagements—had one today, in fact, and the other has engagements as an official of a very large bank there. If they are given the opportunity to go to Chicago and rearrange their affairs, they can return, and I cannot believe that there is any such urgency as my brother suggests which makes it of consequence that this matter be heard at such length as I am afraid it will be necessary to go into it if your Honor takes it up at all, or within such time as Mr. Dodge asks for. This is a very summary matter so far as we are concerned. We are here upon the most immediate notice, and Mr. Dodge much more so than we are. I think that unless your Honor wishes to make two or three hearings of it, no harm will come. As Mr. Whipple has stated, these men are men of responsibility, and they are members of the Bar, and I think that your Honor can rest with some assurance upon the supposition that no harm will come from any acts of theirs in the meantime.

Mr. DODGE. My situation, if your Honor please, is just this: I have not seen the supplemental bill, and I did not know that there was one until this morning. I never heard of my client until this morning, and I have had no opportunity to talk with him. I am going to see him this afternoon. I have a long-standing assignment for seven days, which is beginning today, in the trial of a Superior Court case before an Auditor. I have witnesses here now from various states, in Boston at the present time, to testify this week. Personally I could not possibly attend to this during today and the three succeeding days of this week and the first three days of next week. So that my request for a postponement has been entirely personal to me, not in any way based upon any suggestions of my client, with whom I have not talked. I understood—I had just a moment's conversation with him in the corridor—I understood that he was going to be here for some time, and that that date would not inconvenience him. He is from California.

Mr. MORSE. I can only urge that we do have a court once in six months

down in Dukes County, that we think is a real court, and something ought to be done. The Judge goes down there, and it comes in the last Tuesday in April, and there are two or three cases for trial this term, quite important cases, and I am in those cases. So that if your Honor should put this for next week it would be difficult, if at all possible, for me to have any participation in this proceeding.

Your Honor recognizes that Chicago is quite a distance for these two men to go back and rearrange their affairs in order to come on here for a hearing, which, as brother Chase has said, may take considerable time, and certainly it would be a very great inconvenience for them to go back and forth. So that, for that reason, I should like to see it, as they would like to see it, set down for sometime the week after next.

The COURT. One thing that troubles me about this case is that it does not differ at all, outside of the particular issues involved, from the ordinary case where a preliminary injunction is sought, and nothing definite can be decided by such an order in the end, save that it prevents interference with the orderly administration of the law in the principal case, or the case to which this is a mere adjunct. It will not be possible to have any hearing which will finally determine the rights of anybody in this case, because I take it that it stands or falls with the decision of the principal case. If it were not for what one might call the feelings of the parties, I was going to suggest that a stipulation be filed in the case. I take it that that would be equivalent to an injunction, so far as the parties are concerned. But, if their feeling is, as Judge Chase suggests, a religious feeling, I should judge that they would not be likely to file it.

Mr. CHASE. That is the difficulty, of course.

The COURT. And yet, suppose the situation is that pending the two or three weeks' time which would intervene between now and the actual hearing on this rule, they should continue their propaganda, what would happen? It is a good deal like that old case of laying railroad tracks across the street, which you remember in your county some years ago, in which Judge Harris had part, and where the railroad company, on being summoned to show cause on Monday, or something of that kind, did all the work between Saturday, or Friday, the day on which the summons was issued, and Monday, the day for which the return was made, and the work was all done when they came before the court. And so here the entire mischief of this propaganda might come to fruition and perfection.

Mr. CHASE. There is not any propaganda.

The COURT. I have to assume on the bill that there is.

Mr. CHASE. Nothing like what Mr.

Whipple has said, but a speech at a committee meeting, at which one of our clients was chairman. That is the only definite thing.

Mr. WHIPPLE. That was the only thing that I mentioned, but there were other things that I might mention.

Mr. CHASE. I thought that I was quite correct in thinking that that was the only thing.

Mr. WHIPPLE. It was the persuasion by—

The COURT. I think that I shall let the case go over until the time suggested here, in May. I think that probably no harm can come from it; and I have a sort of a sense that if the persons who are summoned here to show cause shall conduct themselves with impropriety in the interim, it might be a very serious matter.

Mr. CHASE. Your Honor will have no reason to complain of anything that they will do in the meantime, but having in mind the individuality and the profession—

The COURT. Of course, as I said before, and as everybody here knows, if this were an ordinary case, one would compel a stipulation or some other drastic thing; but if this in truth and fact has to do with one's religious beliefs, that is a pretty serious proposition.

Mr. CHASE. Then I understand that it is the 6th of May?

Mr. WHIPPLE. We trust that their religious beliefs will not move them in any way to violate an existing injunction, whether it is directed against

them or not, because we think that while religious beliefs are generally to be commended, that kind of a belief is liable to get them into difficulty.

The COURT. Being within the jurisdiction of the court, I think that it is quite certain that they will not do anything while within the jurisdiction of the court which is in violation of the original injunction.

[Adjourned.]

Publisher's Note—The above is a verbatim report of the proceedings in the case of Eustace et al vs. Harney et al, with no corrections made by us in the stenographic court report supplied to us.

NEW INJUNCTION IN SCIENCE CASE ISSUED

BOSTON, Massachusetts—Upon petition of Daisy Lovering Krauthoff and Edwin A. Krauthoff filed in the suit of Krauthoff et al. vs. J. Weston Allen et al., an ex parte injunction was issued yesterday by Mr. Justice Pierce, restraining the defendants Adam H. Dickey, James A. Neal, Edward A. Merritt, William R. Rathvon, and Mrs. Annie M. Knott, acting as the Christian Science Board of Directors, from interfering in any way with the holding of any conferences of members of The Mother Church having regard to this suit.

An order of notice was issued, returnable Tuesday, April 27.

MOTIONS HEARD IN KRAUTHOFF CASE

BOSTON, Massachusetts—The hearing on the petition of Edwin A. Krauthoff for an injunction restraining the Directors of The Mother Church from interfering with a meeting of the members of The Mother Church called by him for May 3 for the purpose of "harmonious individual unity," opened yesterday afternoon in the Supreme Judicial Court before Judge Pierce.

A petition in behalf of Irving C. Tomlinson and others, members of The Mother Church, seeking to intervene, was denied. Judge Pierce will hear evidence on the question whether the injunction shall be continued, today.

Before this hearing opened Mr. Krauthoff presented a motion for a general restraining order in the case of Krauthoff vs. Allen. Judge Pierce continued indefinitely the hearing on this motion.

SPECIAL STATEMENT

As a result of a conference between counsel for the Christian Science Board of Directors and Mr. and Mrs. Krauthoff yesterday, and with the approval of Mr. Justice Pierce of the Supreme Judicial Court of the Commonwealth of Massachusetts, The Christian Science Monitor was requested to publish in this morning's issue the following: [April 29]

"NOTICE

"With respect to the conference of members of The Mother Church called by Mr. and Mrs. Edwin A. Krauthoff to be held at the Copley-Plaza Hotel, Boston, Mass., on May 3, 1920, at 10 o'clock A. M. the Christian Science Board of Directors announce that Mr. Krauthoff is no longer in the employ of this Board as counsel and this Board has not authorized any litigation brought by him nor authorized him to call the conference aforesaid.

"The question of attending this conference should be decided by each member for himself.

"THE CHRISTIAN SCIENCE BOARD OF DIRECTORS."

Hearing on Motion to Extend Injunction Continued

BOSTON, Massachusetts—Hearing of the motion to show cause why a temporary injunction should not be granted against Fred A. Bangs, James A. Hemingway and Arthur S. Fosbery took place Thursday, May 6, 1920, before Justice Pierce of the Supreme Judicial Court of Massachusetts and the case was continued until May 22 for the filing of further pleadings. The hearing on the evidence will be resumed May 24.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. IN EQUITY
No. 32697.

HERBERT W. EUSTACE et ali
v.

LEWIS L. HARNEY et als.

BEFORE MR. JUSTICE PIERCE

Boston, May 6, 1920.

APPEARANCES:

Sherman L. Whipple, Esq.,
for the petitioners.

Lothrop Withington, Esq.,

William A. Morse, Esq.,
for respondent Bangs and Hemingway.

Frederick Chase, Esq.,
for respondent Fosberry

Charles F. Choate, Jr. Esq.,
for respondent Fosberry

MR. WHIPPLE: The hearing this morning is on the application of the plaintiff Trustees of the Publishing House, for an injunction against three named defendants who are associated in a suit that has already been brought, they being brought in as additional defendants. The bill is sworn to in proper form and I understand that your Honor's ruling as announced the other day and on previous occasions has been in accordance with the custom of the Court requiring the defendants to proceed and show cause why an injunction should not issue. I will read the petition, or state its substance.

THE COURT: I am entirely familiar with it.

MR. WHIPPLE: Very well, then, that will be unnecessary. (Copy of the original bill and supplemental bill follow.)

COMMONWEALTH OF MASSACHU- SETTS

SUPREME JUDICIAL COURT

Suffolk, ss. IN EQUITY
No. 32697.

BETWEEN:

Herbert W. Eustace of Boston and David B. Ogden of Brookline, both in the Commonwealth of Massachusetts; and Lamont Rowlands of Picayune, in the State of Mississippi, as they are Trustees under a Deed of Trust dated January 25, 1898, wherein Mary Baker G. Eddy is the donor,

PLAINTIFFS,

AND

Lewis L. Harney of said Boston, Luther P. Cudworth and James E. Patton, both of Brookline; and Grace O. Jacobs, Thomas C. Fales, Emma W. Fletcher, John J. Lauppe, Mary N. Bartlett and Charles F. Hackett of said Boston, Adele M. Marsh of Dedham, Richard J. Davis of said Boston, Charles A. Applebee Jr. (alias Lawrence A. Almon) of said Boston, and William P. McKenzie of Cambridge, all in said Commonwealth of Massachusetts,

DEFENDANTS.

BILL OF COMPLAINT

1. The plaintiffs, who are duly appointed trustees under a Deed of Trust dated January 25, 1898, in which Mary Baker G. Eddy is the grantor, on the twenty-fifth of March, 1919, filed in this Honorable Court a bill in equity in which they, as trustees as aforesaid, are plaintiffs, and Adam H. Dickey and others are defendants, the docket number of said suit being No. 30,654.

The plaintiffs annex hereto, marked "Exhibit A", a copy of said bill in equity, making the same a part hereof, and hereby restate and adopt the averments contained in said bill in equity as statements and averments of this bill.

2. Upon the filing of said bill an ex parte ad interim injunction against the defendants was issued, a copy whereof, marked "Exhibit B" is hereto annexed. Said ex parte injunction was duly served upon all the defendants and has never been dissolved or in any respect modified, but is still in effect and outstanding.

3. The defendants other than the defendant Applebee are all members of The First Church of Christ, Scien-

tist, in Boston, Massachusetts, known as "The Mother Church", a church organized by said Mary Baker G. Eddy and composed of members residing not only in Boston but throughout the United States and to some extent in other parts of the world.

4. The defendant Harney has been for some years private secretary to one Clifford P. Smith, of counsel for the Christian Science Board of Directors and a Committee on Publication, so called, an office held by said Smith under appointment by said Directors.

Said Harney being informed of the contents of the draft report of the Master, with its findings unfavorable to the defendant Directors, immediately caused to be sent out messages to State Committees on Publication, so called, (subordinates of said Smith) and others, suggesting and urging that in view of the adverse report of the Master, Christian Scientists now might well begin cancelling their subscriptions to the periodicals which were being published by the plaintiffs as organs of the Church founded and authorized by Mrs. Eddy herself.

The sending of said telegrams having been discovered by the plaintiffs, and it appearing that said act was plainly a violation of the outstanding injunction, said Smith, under advice of counsel, as the plaintiffs are informed and believe and therefore aver, in order to exonerate himself and his employers the defendant Directors from the charge of contempt, discharged, or pretended to discharge said Harney from his service as private secretary.

Since the date of said alleged discharge said Harney has been active in doing a series of things plainly forbidden by the injunctive order of this Honorable Court and seriously injurious to the business of the Publishing Society and in interference with the administration of said Trust by the plaintiffs, and has been engaged in and has fomented and promoted, with the other defendants, a plan and conspiracy hereinafter set forth.

The defendants Cudworth, Patton, Jacobs, Fales, Fletcher, Marsh, Lauppe, Bartlett and Hackett have constituted and advertised themselves as an Information Committee, so called, with advertised headquarters in Room 837, Little Building, in the City of Boston. Said Cudworth advertises himself as Chairman of said Committee and the

defendant Jacobs as Secretary and Treasurer thereof.

The plaintiffs aver upon information and belief, that said defendants have not been elected, selected, appointed or designated as an Information Committee or a committee for any purpose by any responsible organization, either church or otherwise, but that they have constituted themselves as a Committee, and said Cudworth, as Chairman, and said Jacobs, as Treasurer thereof, solely in order to carry out the purposes of a plan and conspiracy hereinafter set forth.

The defendant Davis, as the plaintiffs are informed and believe and accordingly aver, represents and holds himself out as Treasurer of an "Employment and Aid Committee", so called, but upon information and belief the plaintiffs aver that said "Employment and Aid Committee", if any such Committee exists, is self-constituted, and self-appointed, and includes certain individuals working in union with the other defendants in carrying out the plan and conspiracy hereinafter described.

The defendant McKenzie, formerly in the employ of the plaintiffs as an editor of certain of their publications, has, since his resignation as such editor, participated with the other defendants in carrying out said plan and conspiracy.

The defendant Applebee, otherwise known as Almon, is a person carrying on the business under the name of "The Redaction Press" or other alias or trade-name, of sending dispatches, statements, or information regarding events, occurring or not occurring, as the case may be, to certain newspapers, especially in California and the Dominion of Canada.

Said Applebee, as the plaintiffs are informed and believe and therefore aver, has been employed and utilized for sending out communications to different newspapers for the purpose of carrying into effect the plan and conspiracy hereinafter described.

5. The suit of Eustace et al. v. Dickey et als. No. 30,654, by order of this Honorable Court on the ninth day of May, 1919, was referred to Honorable Frederic Dodge, as Master. After hearings, on the twentieth day of December, 1919, a draft report was submitted to counsel for said parties containing findings favorable to the plaintiffs and adverse to the defendants, and thereafter on the eighth day of March, 1920, a final report was filed by said Master in this Honorable Court.

After the submission of the draft report to counsel, the defendant Harney immediately sent out telegrams to Publication Committees and others, as hereinabove set forth. Thereafter, upon the decision of the Master and its findings against the defendant Directors becoming more fully known, the said Harney, with the other defendants, and with other persons, some unknown to the plaintiffs and

some known to them but at present beyond the jurisdiction of this Honorable Court, entered into a plan and conspiracy having for its purpose to nullify the effect of the decision of the Master in favor of the plaintiffs, and to accomplish that result by doing those things which the Directors, the defendants in said suit No. 30,654, were restrained and forbidden to do by the order of this Honorable Court; all the defendants and those cooperating and conspiring with them planning and intending by such acts so to impair and injure the business and the publications of the Publishing Society, and to injure and break down the publications created and inspired by Mrs. Eddy and used under her direction as instrumentalities for the promotion and extension of Christian Science as thereby to compel these plaintiffs to resign their positions as Trustees.

While entering upon said plan and conspiracy, and undertaking things contemplated in pursuance thereof, all the defendants, as the plaintiffs are informed and believe, well knew the terms of the injunctive order which had been issued in said case of Eustace et al. v. Dickey, et als., and were fully aware of the terms of said order, and well knew the things and acts which were forbidden thereby, and that the very things which they themselves planned to undertake and carry out were things which said injunction forbade to be undertaken or done or carried out.

The defendants, as the plaintiffs aver upon information and belief, have joined in public statements that they, not being under injunction, could and would proceed to do the things forbidden by said injunction for and in behalf of the Directors, because by reason of said injunction the Directors were unable to do and perform said things in their own behalf.

6. The plaintiffs are informed and believe and accordingly aver, that the defendants, acting together, in pursuit of the plan and conspiracy and for the purposes hereinabove set forth, have done, among others, the following things, with the intent and purpose of injuring the business of the Publishing Society and interfering with its proper management by the plaintiff trustees:

(a) They have undertaken to procure the cancellation of subscriptions by Christian Scientists and Christian Science Churches to the periodicals of the Publishing Society.

(b) By interfering with the employees of the plaintiffs they have attempted to hinder, delay, and prevent the publication of said periodicals on their appointed dates.

(c) They have sent out false and misleading reports, statements and information with regard to the administration of the trust by the Trustees, unjustly and unfairly criticizing the conduct and management of their

trust by the plaintiffs; and among other things have wrongfully and falsely charged the plaintiffs with having withheld from the Treasurer of the Mother Church large sums of money due from the Trustees to said Treasurer, and that in connection therewith the plaintiffs had made false entries in their own books.

(d) In connection with the dissemination of false and misleading statements, and with a view to embarrass, annoy, and vilify the plaintiffs, said defendants have caused to be circulated among Christian Scientists throughout the United States printed requests which they have urged members of the Mother Church to sign, which requests are addressed to the plaintiffs as Trustees, and contain false and scandalous statements with regard to the Trustees, to wit, that they do not obey the Manual of the Mother Church, and do not fulfil the demands of the Deed of Trust, that they are not loyal and faithful and consistent believers and advocates of the principles of Christian Science, as has been found to be the truth and the fact in said report of the Master.

(e) The defendant McKenzie, cooperating with others of the defendants, and with other persons who are not defendants herein but employees of the Publishing Society, by concerted action resigned their offices and employment with the intent to injure and embarrass the plaintiffs and prevent the publication in due course of the periodicals of the Publishing Society.

7. The plaintiffs are informed and believe and accordingly aver that the defendants publicly claim and assert that in what they are doing to annoy, injure and embarrass the plaintiffs in the administration of their trust and to injure the business of the Publishing House, they are acting by the authority and with the approval of the Christian Science Board of Directors (other than Dittmore) the defendants in said suit numbered 30,654. Whether said assertion be true in fact, these plaintiffs having no complete information are unable to state further than to aver that at no time have the said Directors, or any of their agents or servants, in any way known to these plaintiffs, expressed their disapproval of acts openly declared to be done in their behalf and with their approval, and have so far as known to the plaintiffs made no request of the defendants, or any of them, or of their associates, that they should refrain from further acts of the kind and character hereinbefore described.

If said acts are performed at the instigation of said Directors or with their approval, then the defendants are all of them consciously violating an injunction of this Court for and in behalf of those who do not dare themselves to perform the forbidden acts but inspire others so to do.

8. The plaintiffs are informed and believe and accordingly aver that none

of the defendants are financially responsible or able to respond in damages to the extent of the injury which they are doing and are likely to do unless restrained by order of this Honorable Court. The things which they have done and are doing unless restrained will cause serious and irreparable injury to the business of the Publishing Society; will largely diminish, if not destroy its profits; will thereby diminish the amount of profits which otherwise the Trustees would pay to the support of The Mother Church, and will thereby both by depriving the Mother Church of funds which it might otherwise have for its support, and impairing the influence and authority of Mrs. Eddy's publications, do irreparable harm to the spread of Christian Science, and practically defeat the purposes of Mrs. Eddy declared in her trust of "more effectually promoting and extending the religion of Christian Science as taught by" her throughout the world.

WHEREFORE the plaintiffs pray

1. That these defendants be forthwith temporarily enjoined from taking any further action intended directly or indirectly to impede or interfere with the plaintiffs, or any of them, in the discharge of his or their respective duties under the trust instrument of January 25th, 1898;

2. That these defendants be forthwith temporarily restrained and enjoined from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs, or any of them, to resign their offices as Trustees; to impair, destroy, or in any way injure the business of the Christian Science Publishing Society as conducted by the plaintiff trustees;

3. That the defendants may be forthwith temporarily restrained and enjoined from taking any action for the purpose of defeating or tending to defeat the purposes of Mary Baker G. Eddy as set forth and declared in the Trust Deed of January 25th, 1898;

4. That upon hearing said injunction be made permanent;

5. That an account be taken of the damage and injury done to the plaintiffs as Trustees by the wrongful and unlawful acts done by the defendants as set forth in the bill, and that judgment be rendered against the defendants for the amount of such damages and execution issue therefor;

6. For such other relief as the case may require or admit of.

By their Solicitors,

Sherman L. Whipple
Lothrop Withington

Charles E. Hughes
of New York

Silas H. Strawn of counsel,
of Chicago

AMENDED AND SUPPLEMENTAL BILL

1. The plaintiffs on April 8, 1920, filed an original bill in equity against the above named defendants obtaining thereon an ex parte ad interim injunction which has been served upon the afore-named defendants.

2. In said bill it was alleged that the defendants therein named, together "with other persons, some unknown to the plaintiffs and some known to them but at present beyond the jurisdiction of this Honorable Court, entered into a plan and conspiracy having for its purpose to nullify the effect of the decision of the Master in favor of the plaintiffs, and to accomplish that result by doing these things which the Directors, the defendants in said suit No. 30,654, were restrained and forbidden to do by the order of this Honorable Court", and that "all the defendants and those cooperating and conspiring with them planning and intending by such acts so to impair and injure the business and the publications of the Publishing Society and to injure and break down the publications created and inspired by Mrs. Eddy and used under her direction as instrumentalities for the promotion and extension of Christian Science as thereby to compel these plaintiffs to resign their positions as trustees".

3. Since the filing of said bill, these plaintiffs have learned of the activities and the identity of certain of the other persons whom it is alleged by said bill had entered into said plan and conspiracy, to wit, Frederick A. Bangs and James A. Hemingway, and certain of said persons whose identity was known to the plaintiffs have come within the jurisdiction of this Honorable Court, to wit, Arthur F. Fosberry.

4. The plaintiffs upon information and belief aver that the said Frederick A. Bangs is a resident of Chicago, in the State of Illinois, and that the said James A. Hemingway is a resident of Chicago, in the state of Illinois, and that said Frederick A. Bangs and James A. Hemingway are at present sojourning in Boston, in this Commonwealth.

5. The plaintiffs are informed and believe and accordingly aver that Arthur F. Fosberry is a resident of San Francisco, in the State of California, and is temporarily sojourning in Boston, in said Commonwealth of Massachusetts.

6. The plaintiffs are informed and believe and accordingly aver that said Bangs and said Hemingway are chairman and a member respectively of a Committee styled the "Illinois Christian Science Emergency Committee", and that said Committee was formed as a part of said plan and conspiracy for the purpose of attacking, harassing and otherwise interfering with the plaintiffs in the discharge of their du-

ties as Trustees, and particularly for the purpose of persuading members of The First Church of Christ, Scientist, The Mother Church so-called, to refuse to subscribe for, read or circulate the periodicals issued by the plaintiffs as Trustees of the Christian Science Publishing Society; and thereby to compel the plaintiffs as Trustees to resign or to withdraw said suit of Eustace et alii. vs. Dickey et als. No. 30,654, and thereby freeing the Directors in said suit of the injunction granted by this Honorable Court.

The plaintiffs are informed and believe and accordingly aver that said Bangs and said Hemingway, acting together with the defendants above named, and others, in pursuit of said plan and conspiracy, have joined in doing the things, with the intent and purpose of injuring the business of the Publishing Society and interfering with its proper management by the plaintiff Trustees, as set forth in the Sixth allegation of said original bill.

7. The plaintiffs are informed and believe and accordingly aver that said Fosberry has also been active with the defendants and others in said plan and conspiracy, more particularly in sending out false and misleading reports, statements and information, as alleged in sub-paragraph C of Paragraph 6 of the original bill, and in the dissemination of the printed requests containing false and scandalous statements with regard to said Trustees to be signed by members of The Mother Church, as set forth in sub-paragraph D of said Paragraph 6 of the original bill.

8. That said Bangs, Hemingway and Fosberry for the purpose of more effectually carrying out said plan and conspiracy are at present in Boston and not being under the injunction issued against the defendants in this suit are doing those things which by said injunction the defendants in this suit are forbidden to do.

WHEREFORE the plaintiffs pray:

1. That the said Bangs, Hemingway and Fosberry be made parties-defendant to this suit;

2. That they be required to answer this amended and supplemental bill as well as the original bill herein filed;

3. That the defendants be forthwith temporarily enjoined from taking any further action intended directly or indirectly to impede or interfere with the plaintiffs, or any of them, in the discharge of his or their respective duties under the trust instrument of January 25th, 1898;

4. That these defendants be forthwith temporarily restrained and enjoined from carrying out any purpose or plan by either direct or indirect means to compel the plaintiffs, or any of them, to resign their offices as Trustees; to impair, destroy, or in any way injure the business of the Christian Science Publishing Society as conducted by the plaintiff trustees;

5. That the defendants may be forthwith temporarily restrained and enjoined from taking any action for the purpose of defeating or tending to defeat the purposes of Mary Baker G. Eddy as set forth and declared in the Trust Deed of January 25th, 1898;

6. That upon hearing said injunction be made permanent;

7. That an account be taken of the damage and injury done to the plaintiffs as Trustees by the wrongful and unlawful acts done by the defendants as set forth in the bill, and that judgment be rendered against the defendants for the amount of such damages and execution issue therefor;

8. For such other relief as the case may require or admit of.

By their Solicitor,

Sherman L. Whipple,
Lothrop Withington.

Charles E. Hughes,
Silas H. Strawn,
of counsel.

MR. KRAUTHOFF: If your Honor please, we served notice on yesterday and the day before on all other parties in interest that we should apply this morning for an order enjoining the further prosecution of the suit brought by Mr. Whipple on the 8th of April, entitled *Eustace v. Harney*. Our theory being that by bringing the Krauthoff suit on the 31st of March 1920, all controversies relating to the matters of the Christian Science Publishing Society had been brought within the jurisdiction of the court in one suit and that all the processes and proceedings with respect to the situation should take place in one suit, the Krauthoff suit. To present it at this time would take up considerable time of the Court and I want to make this suggestion to dispose of it, that we be permitted in the course of this pending injunction to ask such questions as in our opinion bring out the inter-relation of the two suits and at the close of the evidence in *Eustace v. Harney* the Court may determine whether or not it is an independent suit and may proceed on its own basis, or whether it is a part of the controversy in *Krauthoff v. Attorney General* and should be disposed of by an appropriate order consolidating the two suits and treating it as ancillary to that case and ordered accordingly. The evidence we desire to bring out is not long and can be brought out without undertaking to interfere in the trial of the case of *Eustace v. Harney*. We want to bring out the points that connect the two cases, making it proper for the matter to be disposed of as one case and not two.

THE COURT: I have thought (subject to change, of course) that while the Krauthoff suit may incidentally or directly involve some of the questions which are in the *Eustace* suit, nevertheless in its fundamental aspects the *Eustace* suit is a suit between individuals which only involve not di-

rectly, but indirectly various questions which you desire to raise as fundamental questions.

MR. KRAUTHOFF: We felt, if your Honor please, if we had opportunity of presenting the subject fully in the light of the evidence that your Honor would say that while in form *Eustace v. Harney* is a suit against individuals, the individuals are being proceeded against as defendants in that case who are acting, exercising their rights by virtue—whatever rights they may have in the premises—by virtue of the fact that they are members of The Mother Church, and that whatever they are doing they claim to be doing under the Manual of The Mother Church, which of course involves the construction of the relation of the Manual to the Deed under which the Trustees are operating which is one of the fundamental questions in the Krauthoff case.

THE COURT: The primary difficulty to my passing upon your motion is the fact that in the Krauthoff case the pleadings have not yet been completed; beyond that there is pending at the suggestion of some of the various respondents in the case, a demurrer, so that it might happen that there won't be any Krauthoff case to go on.

MR. KRAUTHOFF: We appreciate that, also.

THE COURT: So I think I better not make any order in reference to it at all. I do not think I ought to take the time to consider matters which may in the end be of no value at all. If the Krauthoff case should go on, it is very likely that all these cases will be considered at the same time by the Full Court.

MR. KRAUTHOFF: The thought we had in mind is so vital, your Honor will pardon me for a moment. Mr. Whipple has sought to enjoin three members of The Mother Church from doing certain things; if he has the right to enjoin three of them from doing these things he has the right to enjoin all of them. The members of the Mother Church has brought a suit against his clients on the 31st of March on behalf of all the membership in which they set up certain rights against his clients. In the very nature of things, if Your Honor please, you cannot dispose of all these things without touching on them all. All we ask is that we might be permitted to bring out the intimate connection between the two cases and at the close of the evidence we might be permitted to present to your Honor our views of the law on the subject with a view to helping your Honor adjust the results. Certainly whatever decree you enter would be so entered that if the Krauthoff case should disappear from the judicial consciousness the decree would still be applied. We do not think, having brought a suit on the 31st of March, bringing to the jurisdiction of this Court the Christian

Science Publishing Society, that after that suit was brought Mr. Whipple can bring this suit, as he himself would say "in flagrant disregard of the jurisdiction of this Court"—that he should be permitted to bring an independent suit and proceed with respect to the trust estate which is within your Honor's jurisdiction by a bill brought on the 31st of March. That is fundamental. It is not within the province of Mr. Whipple to disregard it. If this *Eustace* case was pending in another court our right to enjoin it would be clear under the authorities as an attempt to bring within the jurisdiction of the court questions that are in issue in a suit brought before this court on the 31st of March. I do not want to take up your Honor's time. All I ask is that during this hearing I may be permitted to prove the relation of the two cases and at the end of the case, if your Honor will do me the courtesy of permitting me to present the theory upon which we claim that if an order is made in this case it should be with due regard to the issues tendered in the Krauthoff case as the Trustees are not entitled to any injunction at the hands of this Court so far as they do not uphold the Manual of The Mother Church themselves and so long as they are in default of paying over to the Mother Church the funds that should be paid over. We do it for the further reason that if your Honor will permit us to be heard on it we can point out a way that whatever order or injunction you may issue will operate on the members of the Mother Church as a class and bind the whole membership of the Mother Church and thus bring an end to the idea that Mr. Whipple is under the necessity of separately enjoining a few individuals at a time, but all the members of The Mother Church. I feel sure if your Honor will permit us to do it at the end that you will agree with me that we have at least helped your Honor in reaching a just decision and prevent the Court from taking it up in fragments under an injunction which in effect will only have the effect of exciting further animosity between the Mother Church and the Trustees and promote further dissent, discord and further cancellation of subscriptions. That is the only thought we have on the subject.

THE COURT: There is outstanding an injunction against certain members in this cult. The present bill only seeks to extend that injunction to other members of the church who are alleged to be doing the things which it was the policy of the Court to prevent when the original injunction was issued. No one could be more anxious than I am to make any order which shall be large enough to comprehend all the main issues of this case, but whether it is proper to take it up in conjunction with this matter, this mo-

tion for a temporary injunction, I doubt. That is all this is. It is nothing but a motion for a temporary injunction.

MR. KRAUTHOFF: Except it will be construed by other members of the Mother Church as the voice of this Court. We only ask the privilege of bringing out the intimate relation between the two cases to the end that we may be heard briefly on the proposition that any order that is made to enjoin any of the members of the Mother Church should be with due regard to the bill that is brought on behalf of the members of The Mother Church. In other words, we stand before the Court as representatives of a class and that class includes the people Mr. Whipple seeks to enjoin. If he can prove they are doing anything in their individual capacity—that what they are doing is in their individual capacity and not in their relationship to the Mother Church we would have a right to enjoin them the same as he would have a right to enjoin boys that were throwing stones at the windows of the Publishing House. But where he takes the issues in our suit that was brought on the 31st of March and attempts to telescope that issue into a suit brought by him on the 8th of April, I think we ought to be heard on it. In addition to that there is another thing that your Honor should have called to your attention. That is, on the 31st of March there was a suit brought that has the legal effect of bringing within the jurisdiction of the court the very trust under which his clients are administering. That being true, your Honor has the right as chancellor to administer the trust of which he is a trustee, or rather of which his clients are trustees, to regulate and control any suit that he may bring. Indeed the authorities are to the effect that he should not have brought this suit without the direction of the Court, because he is taking the funds of the estate which we have brought within the jurisdiction of the Court in the Krauthoff case, and which we allege belong to the Mother Church, and using the funds of that estate in litigating with the Members of the church who, as we claim are asserting rights which they claim under the Manual of The Mother Church. Certainly we are interested to be heard on that.

THE COURT: You shall have opportunity.

MR. THOMPSON: May I be heard just a moment? In view of the interlocking of suits, I would like to call attention to a statement made by Governor Bates yesterday to the effect that Mr. Dittmore and his counsel made certain admissions reported in the Monitor. I wish to say that if that statement was made in my presence it would have been contradicted at once. We make no such admissions in the matter at all.

MR. KRAUTHOFF: There was an application for leave to amend the bill by adding three new defendants. The application is formal and we desire to add one defendant, Julia S. Bartlett, as representative of the class known as International Christian Science Association. The defendant we had named was a non-resident and he preferred not to enter his appearance in the suit. The other two are Irving C. Tomlinson and Clifford P. Smith as representatives of the class formerly known as First Members.

THE COURT: They all appear in your petition; you desire to have that petition allowed. I have seen the petition—

MR. KRAUTHOFF: I have an application on file. I will give the Clerk this morning the formal amendment.

THE COURT: When filed it may be allowed.

MR. KRAUTHOFF: The order to answer by the 20th of May will apply to these defendants also?

THE COURT: If they have adequate time to answer. Some of them are at a distance?

MR. KRAUTHOFF: No. All in Boston.

MR. CHASE: Will your Honor appoint the stenographer a commissioner to take the testimony?

THE COURT: In a motion for temporary injunction is that customary? It is entirely a question of the discretion of the court.

MR. CHASE. We would like it unless your Honor has some objection.

THE COURT: I don't think I will make any such appointment. It is a new principle; in a motion for temporary injunction I have to have a stenographer. It would be a new principle and I shall not do it.

FREDERICK A. BANGS, Sworn

Q (By Mr. Morse) What is your full name? A. Frederick A. Bangs.

Q Where do you live? A. Chicago, Illinois.

Q What is your profession? A. I am a lawyer.

Q You are a member of the Chicago bar? A. I am.

Q How long have you been in the practice of your profession? A. Since 1888.

Q Are you a Christian Scientist? A. I am.

Q Are you a member of any Christian Science Churches? A. Yes.

Q Will you state to the court what churches? A. I am a member of the Fifteenth Church of Christ, Scientist, of Chicago, and The Mother Church of Christ Scientist, in Boston, Massachusetts.

Q Was your attention at any time called to a difference between the Board of Directors of the Christian Science Publishing Society? A. Yes.

Q When was it first called to your attention? A. In my recollection is that it was some time in 1917, in my judgment now.

Q At any time after that—after it was called to your attention, did you take any action with reference to it? A. Yes, I did.

Q And what action did you take? A. I wrote a letter to the Trustees of the Publishing Society.

Q Perhaps you have that letter here? A. I have not, no, sir.

Q What was the substance of that letter that you wrote? A. The substance of it was—

MR. WHIPPLE: I pray your Honor's judgment.

MR. MORSE: I haven't asked you to produce it, but if you have it here I would be very glad to have you produce it.

MR. WHIPPLE: We have the original of it, but we do not see how it is material at present at least.

THE COURT: I can't tell whether it is or not.

MR. WHIPPLE: Suppose you hand it up to his Honor and see.

MR. MORSE: I would be glad to have his Honor see it.

THE COURT: Without reading it, what part of this is expected to subserve in any way your interests. I do not quite see how everything anybody connected with the church has done—how everything that anybody has done is of any consequence to this particular proceeding.

MR. MORSE: I wanted particularly to disclose to your Honor just what this defendant has done and what he has written and the purpose and motive in writing these letters.

THE COURT: If it is of any consequence what he did before this suit was instituted—I answer that question "No." Secondly, of what consequence is it what motive he had after this suit was instituted? I answer that "No." The question before me is, what has he done and what does he propose to do? If he does not propose to do anything, take any steps in the future which shall interfere with the successful or unsuccessful prosecution of this suit, no injunction will issue; if he does, it will.

MR. CHASE: May I be heard upon that? It is the position of these respondents that many of the things they are charged with doing in this petition have been done in defence of their faith and strictly in accordance with the Manual which governs their action in that respect, and which deals with the question of Church government and discipline.

THE COURT: Yes.

MR. CHASE: The Manual I expect will be introduced in a moment. Under Article XI, section 4, it is provided that no church discipline shall be begun except in a certain manner. That action concerning the action of any member who is claimed to be recalcitrant shall be taken up with him personally; if the conduct still persists further steps may be taken, and then finally the last action of all may be taken. Now it is in pursuance of the laws laid down as governing the

Church, as the governing principle of this Church that these members, and this member in particular, so far as his personal acts are concerned, has so acted. Further, these defendants and others are charged with conspiracy, and the gist of that conspiracy, as I understand it, is that they had a certain motive. Now it clearly seems to me competent, in order that the defendants may disprove that allegation which I suppose is material or it would not have been made, that the motive which prompted their acts should be stated. It seems to me it must be competent in that respect, if it can be inquired into at all, to inquire into it from the beginning.

THE COURT: I desire to cut this knot in this hearing as far as I can. I just said I cannot conceive how a bad motive or a good motive has anything to do whatsoever with the interference that is complained of,—the interference with the Court's determination of the issues in this case. If the motive was very bad and the conduct was good, then this Court cannot interfere with it. If the conduct is good and the motive is bad, the Court cannot interfere with it in any of the aspects of the case that are now before me. It is only upon the acts that those who are sought to be enjoined here, knowingly and intentionally doing something which shall interfere with the final determination of this question by this Court which justifies any action at all.

MR. CHASE: I did not so understand it.

THE COURT: That is all that is going to be decided.

MR. CHASE: I did not understand it was brought on that theory at all. I supposed this bill was brought on the theory of irreparable damage, and attempts to set up an actionable wrong.

THE COURT: I agree, of course I cannot help it, for there is a prayer in the bill which seeks to recover damages in case something shall happen. But this is not an independent action.

MR. CHASE: I supposed it was.

THE COURT: It cannot be. The basis of this action is that it is brought because of the existence of this other suit—the Eustace suit. If the Eustace suit was not pending there would be no occasion to bring this action. It is because it is urged that they are doing things that interfere with the trial of the case that it is brought. In other words, as I said before, as I understand it,—I did not sit of course when the original injunction was issued, so I do not know what was said at that time—but I take it, unless I am entirely mistaken, this bill seeks to bring these men into the same situation they would have been if they had been named as parties or otherwise when the injunction was originally issued by Mr. Justice Braley. It cannot and will not go any further.

MR. CHASE: I understand so far as the immediate object of this proceeding is concerned that is true.

THE COURT: That is all I can pass on—the preliminary injunction.

MR. CHASE: I understood—

THE COURT: I am not going to hear on a motion for a preliminary injunction questions that underlie all this litigation. I will not pass on them if they are presented. I am going to pass on the question whether there is occasion to enjoin these men for interfering in the conduct of that suit.

MR. CHASE: Then shouldn't the petition be one for contempt?

THE COURT: No. These people were not parties. It is at least questionable as to whether or not they are brought within the provisions of the injunction. If they were brought within the provisions of the injunction, within the purview of the injunction, of course a petition for contempt would lie. If it should happen to be a fact that they were not within the jurisdiction of the Court—I am not suggesting that is so, whether it is or not—that they were not bound by the injunction which issued from this Court, there would be no contempt if it were disobeyed. Therefore it was necessary that steps should be taken to make them parties to the bill. That, I understand, is the purpose of bringing this bill, in part.

MR. WHIPPLE: That was entirely it. It was to prevent other people doing some of the same things that the Court had forbidden the Directors to do.

THE COURT: Because the original bill was not all-inclusive enough to take them all in.

MR. WHIPPLE: It couldn't be, because these defendants had not at that time threatened to carry it out.

THE COURT: They were also non-residents.

MR. CHASE: Is it your Honor's understanding that these three parties are parties to the original bill of Eustace v. Dickey?

THE COURT: No, but they are members of the organization of which these parties plaintiff and defendant and as this witness has just testified, are members. It is alleged (not that I will attempt to follow the bill) that as such members they are seeking to interfere and block the wheels of the administration of the trust. Unless that is so, this Court has nothing to do with them at all.

MR. CHASE: My difficulty is in seeing how if they are not parties they can be made parties without a statement of an independent cause of action which will give jurisdiction to this Court.

THE COURT: That may be so.

MR. CHASE: It seems to me in this bill the relief which is sought at present is not primary relief, but is a secondary matter and the equitable jurisdiction of the Court is sought because of the irreparable wrong. It is alleged in the bill that that is so.

THE COURT: Mr. Whipple, what do you have to say?

MR. WHIPPLE: I think Judge Chase has overlooked the fact that the bill to which his clients are made parties has attached to it as an exhibit the original bill in the Eustace v. Dickey case. It also has attached to it as a second exhibit, the Master's report in the suit reciting that so far as those proceedings have gone the master has found certain facts and that the question as to whether his findings will ultimately be adopted by the Court are now before the Court. We also recite that in that suit an injunction was issued and we attach a copy of that injunction to this suit reciting that the Court upon the instance of the plaintiffs granted that injunction so that its ultimate judgment upon the allegations of the bill might not become a nullity by the defendants themselves doing or inspiring others to do the things which would make that judgment a nullity. In other words, to destroy or impair the prosperity of the Publishing House and thus force the Trustees out by practical measures instead of submitting to the judgment of the Court. In short, it was a statement that the Directors had been threatening and intending, not to appeal to the Court, but to oust the Trustees by extra-judicial measures. Upon these representations in consequence of the bill an injunction issued and a copy of it is given in this bill. The injunction issued against the Directors. Our allegation is with regard to this other bill that they have gone on boasting that they were not held by that injunction because they were not parties to the suit, and that they proposed and were doing the things which would render the judgment of this Court in that suit a nullity. In other words doing the forbidden things, stating publicly that it was because the Directors had been enjoined by the Court that they proposed to do them. I quite agree that we might well have come to this Court and asked for punishment by contempt of that order, especially attorneys who come within the jurisdiction of this court having done things that they know were forbidden by the order of this Court. It seemed better not to present the matter in that way. It seemed better to ask to have the order which had been made in the original suit extended to others who were influential not only in doing those things that were forbidden, but were influential in getting others to do those things forbidden by this Court, because it was the thing that the Court ordered should not be done, and it was not very material whether one person was doing it or another. The Court did not wish the forbidden thing to be done by anybody, of course, and if that injunction stands there is no reason—it would be a strange situation for the Court to say

the defendants in the original suit shall not make the judgment of this Court a nullity, but any one else may who wants to, and therefore as your Honor has so well pointed out, the suit is not of course the same as the original suit, but it is a suit brought as ancillary to it to prevent the interference with the administration of justice by people who do not happen to be parties to that suit. The prayers for relief here are exactly the prayers for relief in the original bill. There is an additional prayer for damages for the injury which these gentlemen, as we claim, have knowingly done to the trust of which the trustees are officers and which they are endeavoring to administer.

THE COURT: Let me say a word. Then I will let you speak. This thought occurs to me. I preface it by saying I haven't in mind for the moment any equity precedent for what I am about to say. Assume a bill is brought in which all necessary and proper parties are joined in the bill. Assume that an injunction issues against such persons and their servants and agents to prevent them doing something which is sought to be enjoined. Assume that others who are not—after the bringing of the bill and after issuing the injunction—that others who are not parties proper to be named in the original bill, do things which would be contempt of Court if done by the parties to the bill and do it with the intent of accomplishing that which the parties to the bill cannot do. Now it seems clear to me that such parties upon doing such things cannot be made by amendment parties to the original bill. By no possibility can that be done. They cannot be punished for contempt because they are not parties to the bill, they are not privies to the parties to the bill, unless perhaps if they are within the jurisdiction they can be punished, not because they are interfering with that which the Court has said shall not be done by the principal defendants, but because they are interfering with the course of justice which is involved in the trial of that case independent of the ground of contempt. Now it would seem to be within the power of the Court and the proper exercise of that power of the Court to order such persons to come before the Court to show cause why they should not stop doing that which the principal defendants could be stopped from doing. Now I am not aware, as I said before, that there is any precedent for such a situation, but it impresses me that the Court has power to do it.

MR. CHOATE: If your Honor please, I do not represent the gentleman who is on the witness stand, but I appear for Mr. Arthur F. Fosberry who is the third of these named in the amendment to the bill, this morning. The original bill that was brought by Mr. Whipple against the Directors of the Church was to establish the right of

Mr. Rowlands to occupy the position of Trustee under a deed of trust and to enjoin the Directors from interfering with the exercise of that duty by the officers of that trust. It was not brought to protect the property of the Publishing Society at all. It was brought simply to obtain a ruling of the Court upon the assertion of the right to occupy and exercise the rights and duties of an officer of that trust. The defendants were enjoined from interfering with Mr. Rowlands in the discharge of his duties of that office and it was to protect the Trustees under the deed of trust that the injunction was granted. None of the defendants named here are charged with having interfered with the plaintiffs in the discharge of that office or desiring to, or intending to. They are charged with quite a different thing, with a thing as alien to the purpose of the original bill as it is possible to conceive. Your Honor has read the bill and the master's report, and this fundamental fact, vital in this issue, which has brought all these people in this room, is exciting every Christian Scientist of the 300,000 or 400,000 in this country, is this Manual of the Church that is conceded to place supremacy in point of power in the hands of the Directors. Whatever Mrs. Eddy believed her deed accomplished, whatever the Court ultimately rules her deed of trust accomplished, that is one of the fundamental facts in the belief of every Christian Scientist, that that Manual controls the action of every member of the Church; that that Manual gives to the Directors supremacy. Now the attitude of the members of the Church is that in view of the determination of the Trustees of the Publishing Society not to submit themselves in any way whatsoever to any direction of the Directors, but to assert their entire independence of that supreme power that the Manual placed in them, that the utterances of the publishers through their printed quarterlies, journals, daily papers, are not the authorized, recognized utterances of the Church, and they refuse by the thousands to read these utterances and cancelled their subscriptions, as they have the right to do. If I am a Christian Scientist, could it be heard for a moment that I could be enjoined at the suit of Mr. Whipple's clients from cancelling my subscription to the Monitor because I do not believe what they said was authorized under the authority of the Manual? Have I less right than a member of a labor union to exercise my personal volition in reference to it? Certainly not. Now then, this amended bill is brought because it was seen that a tide of protest was rising all over this country which no action of the Directors nor even the action of the Court was powerful enough to stay. The action of the Court forbidding the members of this Church from abjuring the writings of

these men whom they believe not to represent the Church—and I say it with all respect—was just as futile as the command of King Canute forbidding the tide to go further. What these gentlemen say is not that these defendants are attempting to interfere with the Trustees in the exercise of their duties, but they are refusing to continue to read the documents which they publish as the authorized publications of the Church. Your Honor will pardon me for being insistent on that point.

THE COURT: I do not think that is a fair statement of the bill.

MR. CHOATE: I haven't completed my statement.

THE COURT: Go ahead.

MR. CHOATE: The amendment charges these three defendants with being conspirators, and the conspiracy is this: "The plaintiffs are informed and believe and accordingly aver that Arthur F. Fosberry is a resident of San Francisco, in the State of California, and is temporarily sojourning in Boston, in said Commonwealth of Massachusetts. The plaintiffs are informed and believe and accordingly aver that said Bangs and said Hemingway are chairman and a member respectively of a Committee styled the "Illinois Christian Science Emergency Committee", and that said Committee was formed as a part of said plan and conspiracy for the purpose of attacking, harassing and otherwise interfering with the plaintiffs in the discharge of their duties as Trustees, and particularly for the purpose of persuading members of The First Church of Christ, Scientist, The Mother Church so-called, to refuse to subscribe for, read or circulate the periodicals issued by the plaintiffs as Trustees of the Christian Science Publishing Society; and thereby to compel the plaintiffs as Trustees to resign or to withdraw said suit of Eustace et al. vs. Dickey et als. No. 30,654, and thereby freeing the Directors in said suit of the injunction granted by this Honorable Court. The plaintiffs are informed and believe and accordingly aver that said Bangs and said Hemingway, acting together with the defendants above named, and others, in pursuit of said plan and conspiracy, have joined in doing the things, with the intent and purpose of injuring the business of the Publishing Society and interfering with its proper management by the said plaintiff Trustees, as set forth in the sixth allegation of said original bill."

Then they allege in Paragraph 7 that:

"Said Fosberry has also been active with the defendants and others in said plan and conspiracy, more particularly in sending out false and misleading reports, statements and information, as alleged in sub-paragraph C of Paragraph 6 of the original bill, and in the dissemination of the printed requests containing false and scandalous state-

ments with regard to said trustees to be signed by members of The Mother Church, as set forth in sub-paragraph D of said Paragraph 6 of the original bill."

And so we refer to Paragraph 6:

"(a) They have undertaken to procure the cancellation of subscriptions by Christian Scientists and Christian Science churches to the periodicals of the Publishing Society."

They have interfered with the plaintiffs "by interfering with the employees of the plaintiffs," by sending out "false and misleading reports," and have urged members of The Mother Church "to sign requests addressed to the plaintiffs, containing false and scandalous statements," etc. Then the others go on to deal with Mr. McKenzie and other defendants, which does not concern these defendants.

In other words, the thing which is charged is a conspiracy by which these defendants themselves should cancel their subscriptions and should recommend and advise and try to persuade others to cancel their subscriptions. Now, that is the gist and substance of this bill, and it is not akin to the relief sought or any remedy that could be given in the original bill. It is a suit, I submit, as Judge Chase has suggested, which, if it could stand at all, would have to stand upon the doctrine of irreparable injury to property, and where the charge is not only of irreparable injury to property but a conspiracy to injure. Because it would be, it seems to me, extraordinary to suggest that any individual member alone could be enjoined from canceling his subscriptions to any of the periodicals of the church, or from refusing to read the publications of the trustees.

Now, the question is whether these people, who are members of the Christian Science Church, who have been obliged to subscribe to every canon of the Manual when they became such members, may together exercise the right which each as an individual has, or whether there is an unlawful interference. Now, as bearing upon the question whether they have conspired to do an unlawful thing, it is certainly for the interest of my client, as well as for the interest of the gentleman who has just been put upon the witness stand, to be permitted to show the court all the facts with reference to his conduct, as to whether he has conspired to do an unlawful thing or not. So we ask that the court permit the inquiry to be broad enough to inform the court whether there has been a conspiracy to accomplish anything which the law forbids.

The COURT. I do not know as you say it, but what you have said as to what the bill represents to me is not quite correct. I agree that each and every one of the members may cancel

their subscriptions. I agree of course that he cannot be forced to read a paper that he does not desire to read. I do not agree that any single member of this church may, for the purpose of destroying or through the destruction of this publication, persuade people not to read the paper, not to take it, for the purpose of compelling these trustees to resign from their office, and so to destroy the force of the petition which is now pending. If as a result of this propaganda these people find that they cannot do anything more, and so resign, by indirection the defendants have won.

Mr. CHOATE. While your Honor's ruling is adverse to my point in one respect, it is amply broad enough to admit this evidence, I submit, because it makes it necessary to inquire into the purpose of these gentlemen's conduct. You must be advised as to whether that purpose was as charged in the bill, or whether it was a perfectly innocent, laudable purpose, and for that object their conduct in all its respects is competent, I suppose.

The COURT. What I say is that whether it falls within the rules of the church or not, their conduct is not to be measured by that rule or the absence of that rule. And so I return to the position I took at the beginning—and I cannot see anything to change it from anything which has been said—that the question in this case is whether or not after the bringing of this suit, and not before, these several people through their conduct are inducing people to so act toward these trustees, and the duties of these trustees, as shall, if continued, force these trustees to abandon their suit.

Mr. CHOATE. May I make one suggestion: That the principles that apply to the rights of labor organizations certainly would be—

The COURT. Well, let us leave labor organizations out; it is a branch of the law that I do not have much to do with.

Mr. CHOATE. Nevertheless, it is a branch of the law which is before you—

The COURT. I don't think it has any application to a case of this kind.

Mr. CHOATE. —and the principles which are involved in it certainly apply to any combined action of individuals in the assertion of their rights.

The COURT. What I have tried to say in this case is that I do not think this is a case of combination, when I said I thought each individual might be enjoined from taking such steps. I do not think it depends upon conspiracy at all.

Mr. CHOATE. That is, your Honor would say that an individual may be restrained?

The COURT. I said an individual cannot go out in a case of this kind and induce people to do things which the Board of Directors could not do, if the purpose of that action will re-

sult in depriving the court of the power to settle this controversy.

Mr. CHOATE. That is not the situation, if your Honor please.

The COURT. That is the way I understand it; that is the way this case is going to be tried.

Mr. CHOATE. Your Honor must at least permit us to show that that is not the purpose.

The COURT. All that has been said here upon the question to the witness was that I do not see, and I could not see, what the purpose of this man was, what his motive was, what his belief was, before the bringing of this suit, had to do with this question. You may show what happened afterwards but not before.

Mr. CHOATE. It shows whether his purpose was an innocent one or not.

The COURT. I do not think so—

Mr. CHOATE. For instance, if your Honor please—

The COURT. —whether it was innocent before.

Mr. CHOATE. I hope your Honor will be patient with me for a moment. The purpose with which men have united to assert their right to work is vital in ascertaining whether they shall be enjoined from a certain course of action or not. The purpose with which men unite to strike to compel the action or inaction of any other persons is vital in determining how the court shall act. Have not these people a right to act unitedly in support of the doctrines of their church? And if their purpose is to support the Manual of that church and to compel recognition of it, isn't that an honest and just right to support? Take any other organization. Take the congregation of any church, which believes that those who are in office are preaching a false doctrine. Are they to be enjoined from meeting together and uniting in such action as will prevent the dissemination of that false doctrine? If there is any personal liberty left for a man to exercise his right to free speech or to worship as he pleases, surely these gentlemen, who are believers in this form of faith, which lays down this Manual to govern their conduct, and the conduct of everybody else, are justified in asserting that right, and the assertion of that right is an innocent assertion. It cannot be said that the court shall stop a man's mouth from saying that the Manual in which he believes is supreme, and that a man who denies it is striking at the foundation of his faith, and that these men cannot talk together about it, and that they cannot act together about it. What your Honor is asked to do now, and what, as I understand it, you are intimating that the court is intending to do, is to enjoin Mr. Bangs from saying to Mr. Fosberry, "Mr. Fosberry, the publications of these trustees are in the teeth of the directions of the Manual. Can you endure to continue your support of them when you believe that to be so?" And

Mr. Fosberry replies, "I believe, Mr. Bangs, as you do, and I shall cancel my subscription." That is a sufficient conspiracy, if it be a conspiracy. Those two men have united. That is all these people have done. They have tried to bring this truth home to all the members of this church, that the periodicals that are being put out by these gentlemen are not true doctrines, they are not the representations of the Christian Science faith. That is their belief, and it is a very firm belief. Will the court enjoin them from saying that to each other and acting in accordance with the suggestion that naturally flows from that belief? I submit that that is an innocent purpose and that their purpose must be shown to the court; that the greatest injustice would be done if you will not permit these men to tell the reasons why they have undertaken to do what they have done. There is no way to assert their rights, they have got to be condemned under the mandate of this court, unless you let them tell why they have done it.

Mr. CHASE. Might I also say another word with reference to the particular bit of testimony which is now before the court? We intend to show that the doctrine that ecclesiastical councils, as a preliminary step to action—

The COURT. Well, everybody knows that this court cannot pass on an ecclesiastical question.

Mr. CHASE. That is just exactly it.

The COURT. Very well; then I do not intend to take up the question at present which you desire to raise. Whether we may be obliged to do it ultimately in the final determination of these questions because property is involved and property rights, I do not pretend to say. I doubt very much the wisdom of the court undertaking to do any such thing, to say nothing about the right of it.

Mr. CHASE. We are not responsible for the questions that are raised in their bill. We do not ask to raise any except those that are raised on the face of the bill. On the testimony which we intend to offer we claim this is a matter of faith and of doctrine, and that it has been interpreted and passed upon in the State from which these gentlemen come in an ecclesiastical council, called in accordance with the rules of government of their church, and they are acting in consonance with the directions of that council in an ecclesiastical matter for the protection of their faith and for their religion. We claim that the purpose is a proper one, and we believe that the court will say so; that everything they are doing in the fulfilling of their object is proper and is lawful, we believe if the court will hear the argument the court will say was so as a matter of fact. That is all we ask in this case, and I do submit again the analogy of this to the cases which involve the principles of strikes, and ask

the same protection for the faith that is given to the dollar.

Mr. KRAUTHOFF. If your Honor please, the question now before the court so vitally affects the interrelation of the two cases that I may be pardoned for saying a few words. We may go back to the beginning of *Eustace v. Dickey*, in which Mr. Whipple pleaded, in the 17th paragraph of his bill, the theory of the "empty shell," and which with your Honor's permission I will read:

"17. The plaintiffs further aver upon information and belief that it is not a part of the plan of the defendants to appeal to the Courts for an orderly determination of the question of their right to remove the plaintiff trustees under existing circumstances, but that on the contrary they propose to accomplish their removal by the exercise of the great and dominating influence which they carry by reason of their official position and in the exercise of their power to dominate and control members of The Mother Church by the powers of discipline which they hold, and to influence the action of other churches by refusals to grant licenses or appointments.

The plaintiffs believe that the defendants intend thus to make the office of trustees practically untenable by the plaintiffs, or to make the performance of their duties so arduous and disagreeable as thereby to induce their voluntary resignation as trustees and their compliance with the demands which the defendants have made upon them as hereinabove set forth.

The plaintiffs further aver upon information and belief, that the defendants have stated to many Christian Scientists in substance that they plan to obtain control of the Publishing Society, or to destroy it; that if the plaintiffs as trustees continue to resist the demands of the directors and refuse to conform to their will, the directors propose in the terms used by one of them, "to make the Publishing Society an empty shell," and to accomplish that result by using their great influence with Christian Science churches and throughout the field to induce Christian Scientists not to continue to subscribe for and support the publications published by the Society established and founded by Mrs. Eddy, but to subscribe for and support new publications which the directors have threatened, themselves, to publish and issue, to take the place of those which the plaintiffs as trustees are now publishing as the duly authorized and accredited works of the great Founder and Leader of the Christian Science movement."

Then the 18th paragraph and 19th paragraph are an amplification of this statement, and relate to the destruction of the Christian Science Publishing Society as property. Now, your Honor has made the very interesting distinction which, if it were possible

to carry it out, would have made very largely for the speedy determination of this case, namely, your Honor is proposing this theory, that what Mr. Whipple is trying to do is to enjoin people from interfering with his lawsuit. Of course if that were all there was to this case we would not be here today talking about it. Mr. Whipple can proceed with his lawsuit as a lawsuit to his heart's content, but the lawsuit that he is proceeding with relates to property of The Mother Church. Now, he is not somebody who is dealing with us at arm's length; he is not somebody who can stand off at arm's length and say to the members of The Mother Church, "You must not talk about this." He is dealing with a piece of property that primarily is conducted in buildings that belong to us; he is publishing literature which he claims to be the official organs of our church; he is publishing literature which he claims it is our duty to purchase and to sell in our churches and in our reading rooms, and that we have no power to purchase any other literature or to have any other publishing society. He says we must read in our churches the lessons that he prepares. And he says, as to all these things, he has certain rights as against us. And then we come back and say, "Yes; but, Mr. Whipple, our directors have the right to elect editors to your periodicals." "Oh, no," he says, "not now, because Mrs. Eddy is no longer living." And remember, if your Honor please, that whatever Mr. Whipple may have said at the outset of this litigation to the effect that we had no Manual, (and that issue was found against him), whatever he may have said that he was not bound by the Manual, (and the Master has indicated that he was not), in his answer to the directors' bill he admits that he is bound by the Manual, and when he made that admission he ended his lawsuit. He is subject, if your Honor please, to the will of the members of The Mother Church expressed in a proper and authoritative form so long as he continues to publish what he claims to be the periodicals of The Mother Church, so long as he continues to occupy our premises, so long as he claims the right to compel us to purchase his periodicals. We are not dealing with him at arm's length. It is a subject upon which we as members of The Mother Church are required to be regarded. We have the right to talk to each other about it, just as we had the right to talk to each other last Monday about some other things that were recognized in this court. We have the right to say to Mr. Whipple that as members of The Mother Church you will either come and obey this Manual or we will by our joint action, expressed in such form as we think proper, cease to have anything further to do with you, and no court can enjoin us from that.

That is the reason, as I said this morning, that the subjects are inter-related. This court in the exercise of its administration will enforce this trust, and should take a broad view of this situation and enter an order that will dispose of this controversy. I know that when it comes to a judge that his order has been violated it seems that the judicial dignity has been affronted; and we request the judge to be exceedingly careful that in protecting the dignity of the court against an affront that may grow out of a violation of an order, he is not at the same time overlooking that fundamental justice that he is called upon to administer against an affront to its dignity. If an injunction was issued to prevent somebody from interfering with the conduct of a lawsuit, and if somebody made themselves a party to the violation of that injunction, I would not ask your Honor to listen to me for a single minute. But our theory is that what the members of The Mother Church have said to Mr. Whipple is, "Go on with your lawsuit to your heart's content; we won't interfere with your lawsuit; but we will not buy your periodicals and we will ask other people not to buy your periodicals, until such time as you come completely under the Manual written by Mary Baker Eddy. Until you do that you are to us as an outlaw; and you may go with all the lawsuits you want, and all the publishing house you want, but we will not unite with you."

On the other hand, if your Honor please, the reason we stand here as members of the church, as representatives of a class, is to say to your Honor that if you will enter an order pending this suit to put Mr. Whipple back where he was when the controversy started, and that is under the Manual of The Mother Church,—which he admits in his answer, filed in this court a few days ago, binds him—that we, as members of The Mother Church, will lovingly submit to your Honor's jurisdiction, and you can issue an injunction against us as a class from interfering with his lawsuit or his business, for we have no intention of doing anything. It is our business. The net profits come to our church. The business was established by our Leader.

And so we ask, if your Honor please, that on this matter the whole case be heard fully. You are dealing with a subject of vital importance to thousands of people, and whatever order you may enter will command force because your Honor heard before you condemned, because your Honor took into consideration everything that had relation to the case; so that it cannot be said of an order entered by your Honor, as it may be, "Well, the court would not listen about that, and would not listen about something else." You do have to

decide ecclesiastical questions when they are properly presented. You do have to enforce the proper orders of the established ecclesiastical authorities of a church when they are properly before you. May I ask, if your Honor please, that you go into this subject fully. I have stood, and do stand, against the wholesale cancellation of subscriptions. At the same time I have stood, and I do stand, for obedience by these trustees to the Church Manual, because without it they are no longer the trustees of The Christian Science Publishing Society.

The COURT. Mr. Whipple, do you care to say anything?

Mr. WHIPPLE. I will take just a moment. The erroneous statements by Mr. Choate as to the objects and scope of the original bill are of course entirely innocent and due to the fact that he is recently in this litigation. Mr. Krauthoff has the better conception with regard to those issues, as illustrated by what he has read to your Honor, which I proposed to read, or did propose to read, from the original bill, to show what the object and scope of that bill was. It was more, and is more, than the simple determination of the question as to whether Mr. Rowlands was put out of his position by proper authority, and whether he was, and still is, a member of the Board of Trustees. The bill went much farther than that, as appears from what Mr. Krauthoff just read.

The bill said that the putting out of Mr. Rowlands was the first step merely, or the attempt to put him out was the first step, in carrying out an object which the directors had, and had entertained for some time, of absolutely dominating the Publishing Society; that in order to accomplish that purpose they did not intend to appeal to the court, but that they intended to use the great power and authority of their position so to embarrass the trustees in the administration of their trust as to compel them to resign or to make their positions untenable; and we asked that this court, while the questions were being determined which were submitted for judicial determination, should stay the hands of these directors, and prevent a course of action which would make our appeal to the court a futile thing and any judgment of the court a nullity. That is, having placed the matter within the jurisdiction of this court, we asked that all citizens—that the directors—should abide by the decision of this court. And we said there was danger they would not; that by propagandizing, and by other methods, they would defeat the jurisdiction of this court, and render any order or decree which was made a futile and useless thing. It was on those representations that the court said, "We will stay the hands of these directors; until this question

is adjudicated under the laws of this Commonwealth, the administration of justice shall not be interfered with by extra-judicial measures." That is what that injunction meant. "We will hear the case; and there must be in the meantime a restriction imposed upon these directors in respect of doing the things which otherwise they might of course do." A temporary restriction, or perhaps a permanent restriction, if the court felt that what they were intending to do ought to be enjoined permanently. That was the situation.

Now, then, these gentlemen, with others, have gone about proclaiming "We are not bound by this injunction; we are permitted, because we are outside the reach of the arm of the court of Massachusetts, to defeat the purposes of that litigation; we are not bound to stay our hands and to stay our tongues, to await the result of that judicial process; from a safe place outside the Commonwealth we may do the things which that court has forbidden the directors to do; we may accomplish the result of ousting the jurisdiction of a Massachusetts court, which the directors are forbidden to do; we may make the judgment of the Massachusetts court a nullity, and its judicial process a futile thing, although the directors cannot."

Now, while there is a great deal to be said in favor of the liberty of speech and freedom of utterance, and obedience to the Church Manual, something is to be said, and must be said, with regard to obedience to law. The issue which is tendered here seems to be as to whether, while these judicial proceedings are going on, there shall be obedience on the part of a certain sect, or a certain lot of people, to some other authority than the authority of law, as expounded by the court; as to whether there is some ecclesiastical tribunal which can authorize its members, under the guise of the protection of a religious belief, to defy the mandates of the court while proceedings are going on and render them a nullity. That would appear to be the issue that is tendered by the somewhat impassioned utterances that we have heard with regard to free speech and liberty of belief. One or the other must be temporarily restricted.

Either the utterances of the people who are trying to beat down and ruin publications of Mrs. Eddy in violation of the injunction and in violation of her wishes, must be restricted, or the court's power to enforce its decrees and to administer justice without the interference of popular clamor or popular influence, or the menace of large numbers of people, must be restricted. And of course in such a situation there is but one reply, there is but one reply. The law of the land is supreme, and the mandates of the court must be obeyed and the judicial processes of the court reaching its final

decision must be respected, and must be respected by all who come within the limits of the commonwealth. Otherwise we no longer live under a system of laws; otherwise we have tribunals created in this country which command the obedience of the citizens of this country against the law.

Your Honor has pointed out in the clearest and most concise language possible the exact issue, and I need not repeat it. The question is a simple one: Shall others outside the directors be permitted to do the things that the directors are forbidden to do? Shall they be permitted to make the judicial proceedings here a mockery, when the directors are not permitted to do it, by the exercise of influence, by inciting people to do things which they know the court has forbidden to be done?

Something is said about a "rising tide of protest." The "rising tide of protest" is nothing but the result of an inspired propaganda, which we allege in our bill is based upon misconception and false statements. There is no "rising tide of protest"; there is a rising tide of a purpose to defeat the administration of justice in this court by extra-judicial proceedings. That is all the "rising tide" is. And I have no fear that the court will be able to maintain itself against any such "rising tide" as that.

Mr. MORSE. If your Honor please, will your Honor indulge me for a moment that I may present perhaps a few facts for your Honor's consideration from a somewhat different angle than they have been already presented to your Honor?

I wish to state, as outlining somewhat the situation of these defendants, that perhaps this is the first time that any defendant has been brought before this court, in all this Christian Science litigation, in exactly the same position as are these present defendants. This long litigation has gone on as between the directors and the trustees of the Publishing House, but the beneficiaries under the trust, the great body corporate of the Church, are really here in the presence of these two defendants.

I am tempted to make these suggestions to your Honor by Mr. Whipple's statement that it is time that we had some regard for obedience to law. The facts which I propose to bring out by these men are facts not only in obedience to the Manual but in obedience to law. These two gentlemen whom Judge Chase and I represent are lawyers of standing in the practice of their profession. They are familiar with injunctions, and have the highest regard for the orders of courts. They would not wilfully violate an injunction in any spirit of disregard. I want to show that these men have not gone about and attempted to say, openly or in a whispering manner: "We can do what the directors have been forbidden to do." I want to show

that what they have done has not been the result of any persuasion on their part, exercised by them. I want to show that these men were at a meeting, not even called by themselves, not inspired by them, the voluntary acts of other people, the voluntary acts of all the churches of Illinois, at which there were present hundreds of delegates, and at that meeting, after a conference, they seeing the situation that existed, actuated by the motive which they believed to be the one motive which should actuate them to save the Christian Science Church from destruction, have passed a series of resolutions and appointed these gentlemen to come here to confer with the Attorney General of this commonwealth. That is a perfectly proper legal thing to do. That shows how carefully they intended to proceed. I propose to show that not one of these defendants that Judge Chase and I represent have at any time acted in accordance with any suggestion, advice, agreement, understanding or purpose, express or implied, with the directors or either of the directors of The Mother Church.

Now, these men came here representing hundreds of Christian Scientists. Perhaps your Honor would permit me to read at this time the petition which they offered to the Attorney General. I shall be pleased to read it.

The COURT. Not at present. Go ahead with the rest of your remarks.

Mr. MORSE. Yes. They came here in pursuance of a lawful purpose, appointed as a committee, trusted and respected by all their fellow Christian Scientists, to consult with the Attorney General and get his views as to what action might be taken, if any, to remedy this terrible situation. They arrived here. They were followed about by the trustees of the Publishing Society as if they were conspirators who had come here to burn and destroy the building, and summoned into court without a moment's notice and asked to show cause why they should not be made defendants and an injunction be issued against them to restrain them from doing what must appeal to your Honor as a lawful thing to do for men in a representative capacity representing a large body, not in their own state, to come into our commonwealth to its judicial head. That is in obedience to law, and that is their position.

There has never been any decision in this court that the Christian Scientists throughout this country should cease to obey the Manual. The plaintiffs in this suit recognized the Manual as giving the direction and giving aid and assistance and the very means of direction as to what Christian Scientists should do when occasions like this arose. They have conferred with one another, they have endeavored to reconcile the differences. The very first purpose of the letter which I put in was to show that they in the most

friendly manner attempted to remonstrate with the trustees of the Publishing House, in accordance with the scriptural injunction contained in the Manual. They took up their case with the directors—all done in a friendly, amicable spirit, all done in an attempt to avoid this litigation. And having failed in this which they have done in accordance with these preliminary instructions as laid down by their revered leader, they go to the Publishing House.

Colonel Bangs and these other two gentlemen are merely members of a conference that they did not call together, that arose out of itself from a sentiment existing in the minds and hearts of all the Christian Scientists who lawfully and thoughtfully and prayerfully appointed a committee to come here to the commonwealth of Massachusetts and see what, if anything, could be done to relieve the faith and the Church from the impending destruction which hovered over it.

Now, of course your Honor will give these men a hearing. Men cannot be enjoined without having an opportunity to be heard as to what they did. And I am confident that when your Honor hears and sees these men, hears their testimony and sees what they did, and is made familiar with the circumstances under which they acted, your Honor will see that they are not here to interfere with the original law suit, which is a construction of instruments as to the rights of various boards as relating to each other, but they are here in pursuance to the Manual of Mrs. Eddy, which is still in force and always will be in force; that the meetings were called in strict accordance with all this Manual; that every proceeding was orderly and legal, and that they ask that they may have the opportunity of getting legal aid in the hour of need.

Mr. KRAUTHOFF. If your Honor please, something that Mr. Whipple has said makes it necessary for me to remind the court that there is nothing in Christian Science which teaches disobedience to the law.

The COURT. Oh, I suppose that is so. I do not suppose he meant to say otherwise.

Mr. KRAUTHOFF. Mr. Whipple proceeds upon the idea that he has obtained a final decree forbidding the members of this Church from saying anything against the Publishing Society. Now, he has obtained an injunction in the case of Eustace v. Dickey which extends to the directors, their agents and servants; but the members of this Church are not agents or servants of the Board of Directors. In an independent suit to get an injunction against a member of The Mother Church, that injunction must stand upon its own basis and upon its own rights. The injunction was granted upon affidavits of these plaintiffs in the Eustace case that at all

times they had run the Publishing Society upon their own responsibility, and that the directors were arbitrarily seeking to compel the trustees to be obedient to the Manual. The Master finds that the Manual was observed because it contained the by-laws sanctioned and approved by Mrs. Eddy, the leader of Christian Science. So that we stand here upon an injunction which is based upon a bill containing facts which the Master has found to be not true, when he found as a matter of law that the trustees are not bound by the Manual. But that was not the statu quo when the litigation began. So we in behalf of the members, as Mr. Morse has said, the members of The Mother Church, are at the bar of this court. If you upon a final hearing enjoin us from ever saying a word against the Publishing Society, that injunction will be obeyed until a court shall see the impropriety of it and reverse it. But as long as for the first time these plaintiffs are attempting to enjoin the members of The Mother Church, we do say that the matter is de novo and is open to the fullest investigation.

The COURT. We return to the position which we started in, and I think I shall have to repeat what I then said; nothing has disturbed me in the least about it: That we shall proceed with this hearing and the conduct of these people commencing with a time after the beginning of this suit, and that this court is not interested in the slightest degree in the faith or want of faith in the Manual or in the by-laws of these people before the time that suit began.

The only question I shall pass upon in this case is the question as aforesaid, as to whether or not these particular defendants by their conduct intend or not to prevent a determination of the question which is involved in the Eustace suit. If their conduct shall result naturally in such a thing, then it is fair to say, and I think everybody must agree that it is a fair situation, that these people should be prevented from taking such a step.

The case may proceed.

Mr. MORSE. May I ask, your Honor, I am not quite clear as to your Honor's meaning as to the time. At the time of the filing of the original bill, or this present bill?

The COURT. No, I mean the Eustace suit itself. The date of that filing I have not in mind. In the Eustace suit an injunction was issued to the Board of Directors, to prevent them from doing certain things. Now, the only question presented in this case is whether or not these men after the issuing of that injunction have taken the steps which would have been contempt in the directors to have followed. If they have not, that is an end of that branch of this case. If they have done things, and are intending to do things, which would be contempt of this court under that in-

junction if they were the directors or the servants or the agents of the Board of Directors, then that to my mind is a different question.

I am setting aside now the question as to whether or not under the Manual there may be these meetings that have been talked about. I have some query about the legality of meetings which were held; under the Manual I take it the Board of Directors have the control of meetings.

Mr. CHASE. No, sir.

The COURT. All right, perhaps they do not; not out of this state, perhaps, but in this commonwealth.

Mr. WHIPPLE. May I inform your Honor that the bill to which your Honor has referred was filed, and an injunction issued, on March 25, 1919.

The COURT. Now I want to say again on the subject of the argument that it does not occur to me at the moment that it is of any importance here whatsoever whether there was any conspiracy or not. The act of any member to accomplish this result is just as bad as if there was a conspiracy. There is no charm about the word "conspiracy."

Q Colonel Bangs, I understand that by the direction of the court I am to examine you in reference to matters only in which you took any part or participated since the 25th of March, 1919, at the time of the filing of the bill. I think I asked you if you wrote a letter to the trustees.

A Yes, sir.

Q What next did you have to do with reference to this controversy between the directors and the Publishing House, or what steps did you take in any direction whatever? A. Subsequent to March 25th, 1919?

Q Subsequent to March 25th, 1919.

The COURT. Is that the date of the injunction?

The CLERK. Yes, your Honor.

A My recollection is that I attended two meetings shortly after that time; one held in the First Church of Christ, Scientist, of Chicago, and another I think at Eighth Church of Christ, Scientist, of Chicago.

Q About when was that? A. As nearly as I can recollect it is about a month, within a month, after March 25, 1919.

The COURT. That would be either the middle of April or the first of May?

The WITNESS. I should judge so. It might have been before that, your Honor.

Q Now, what did you do at that meeting, or say? A. I told the members of the Church that were present at that time what had taken place in Boston on March 25th.

Q And what did you state? A. That's the substance of what I said. I couldn't remember exactly what I did state, but that was the substance of it. And that was all.

Q Was anything else done or said by you at that meeting?

Mr. WHIPPLE. Possibly it might be of advantage to state what he said, because the only thing that had happened was that a bill had been filed and an injunction granted.

A That is the substance of what was said at that time.

Q Now, did you attend another meeting? A. Yes, later in 1920 I attended a meeting of Fifteenth Church, of which I was a member; and at that meeting I stated to those present that I had been led from prayer to cancel my subscriptions to the publications of the Christian Science Publishing Society and not again to subscribe to them until new trustees were placed in control of the Society, because in my judgment the trustees were disobedient to the Manual of The Mother Church and that the publications were no longer organs of The Mother Church or its publications. And then I moved that the Board of Directors of Fifteenth Church be instructed to call a conference of the churches of Chicago to consider the wisdom of cancelling subscriptions to the publications of the Christian Science Publishing Society.

Q Go on and state what further was done at the meeting.

A The Chair ruled the motion out of order and told me that I might take an appeal to the members, which I declined to do.

Q Have you now stated all that you remember as to what took place at that meeting? A. Yes, sir.

Q Were you present at any subsequent meeting? A. I have been present at one or two meetings of the members of the Church since that time; yes, sir.

Q Coming to it directly, were you present at any meeting, or a conference called? A. I was present at a conference of the churches of Illinois, the Christian Science Churches of Illinois, held in Chicago on April 2, 1920.

Q Did you have anything to do with the calling of that meeting? A. I did not.

Q Had you taken any steps or measures to be elected a delegate to the meeting? A. I had not.

Q Will you state to the court under what circumstances and how it happened that you came to attend the meeting? A. A day or two before April 2d, in the evening, I was called on the telephone at my home by the clerk of Fifteenth Church and asked if I would be willing to serve as a delegate to that convention or conference, and I stated that I would.

Q Go on, Mr. Bangs, and state. A. Afterwards I received an appointment as a delegate to that conference, and I attended at First Church of Christ, Scientist, of Chicago on April 2d, I think at 2.30 o'clock in the afternoon, when there were some six or seven

hundred other persons present as delegates to the conference, from all over Illinois.

Q Now will you describe what took place at the meeting? A The chairman of the committee that called the meeting presided, and stated that the members present should elect a chairman. And thereupon I was elected chairman of the conference.

Q Now, what did you do or say at that meeting? A. After I took the chair I stated to the persons present that I considered the conference one of the most important conferences that had ever been held in Christian Science, because it appeared to me that there was an attempt on the part of certain persons to disrupt the cause of Christian Science. That was the substance of what I said.

Q Was there any action taken at that meeting? A. Yes, sir.

Q Were there resolutions adopted? A. Yes, sir; adopted for the purpose of reference to the Churches. We understand that at a conference of Churches called under the Manual no action in and of the conference itself can be taken, except to refer the action to the Churches of the state or the Churches participating in the conference, for their action.

Q Did you prepare those resolutions, or have anything to do with the preparation of them? A. I did not.

Q Did you offer these resolutions at the meeting? A. I did not.

Q Is this a copy of the resolution that was adopted at that meeting?

A This is a copy of three separate resolutions that were adopted at that meeting.

Q So far as you know, did the Directors of The Mother Church or either of them in any way advise counsel to prepare, or in any way have anything to do with the preparation or adoption of these resolutions? A. They did not.

MR. MORSE: I wish to offer this, if your Honor please.

MR. WHIPPLE: Something was said about there being three separate resolutions.

MR. MORSE: I will read this, if your Honor please. But first I will have it marked.

[Printed copy of resolutions marked Exhibit 1.]

The resolutions are as follows:

FIRST CHURCH OF CHRIST,
SCIENTIST

4017 Drexel Boulevard
CHICAGO

Chicago, Ill., April 3, 1920.

Boards of Directors,

Churches of Christ, Scientist, and
Christian Science Societies in the
State of Illinois.

Dear Co-Workers:

The following resolutions and recommendations were adopted by the

delegates assembled at the conference of Churches of Christ, Scientist, and Christian Science Societies in Illinois, on Friday evening, April 2, 1920, in First Church of Christ, Scientist of Chicago, and by them recommended to the churches and societies for ratification and adoption at meetings of their members.

It is requested that action be taken upon these resolutions by each organization at as early a date as possible—not later than April 10th—and the result forwarded the same evening to the undersigned. Each of said resolutions should be acted upon separately.

RESOLUTIONS

WHEREAS, Our revered Leader, Mary Baker Eddy, has said, "The Rules and By-Laws in the Manual of The Mother Church sprang from necessity, the logic of events, from the immediate demand for them as a help that must be supplied to maintain the dignity and defense of our cause" (Miscellaneous Writings); and

WHEREAS, Obedience to the said Manual is essential to the spiritual growth of the members of The Mother Church, and to the unity, strength and advancement of the Christian Science movement throughout the world; and

WHEREAS, Said Manual vests in The Christian Science Board of Directors in Boston, Massachusetts, ultimate direction and supervision of all the properties, agencies, interests and activities of said church, including the Christian Science Publishing Society, its Trustees and its publications; and

WHEREAS, The Trustees of the Christian Science Publishing Society are, and each of them is, guilty of flagrant disobedience to the said Manual in refusing to recognize the aforesaid authority of the said Board of Directors over said Christian Science Publishing Society, its Trustees and publications; and

WHEREAS, Said Trustees, in furtherance and emphasis of such disobedience, have instituted and are prosecuting in the Supreme Court of the State of Massachusetts litigation whereby they seek a judicial determination of their alleged independence of the said Board of Directors; and

WHEREAS, Because of their said acts of disobedience, the said Trustees are, and each of them is, recreant to the trusts vested in, and assumed by them, and said trust is endangered, and said Trustees ought of right to resign or be removed; and

WHEREAS, It is of paramount importance to The Mother Church, to its members, and to the cause of Christian Science, that the supremacy of said Manual and the sole authority of the said Board of Directors in the premises be definitely established and

recognized, and that the trusts of said Church be conserved; and

WHEREAS, The Attorney General of the Commonwealth of Massachusetts as such is empowered by law, upon proper application, to institute proceedings to remove said trustees, conserve said trust and protect the interests of the beneficiaries thereof, The Mother Church and its members; now, therefore, be it

RESOLVED, By us the delegates assembled at the conference of Churches of Christ, Scientist, and Christian Science Societies of Illinois, that a committee of five,*

*The following were appointed as such committee: Frederick A. Bangs, James A. Hemingway, Mrs. Mabelle B. Armstrong, L. D. Hedstrom, and Mrs. Fannie D. Wilson. who shall be members of The Mother Church and residents of Illinois, be appointed by the Chair, and of which the Chair shall be a member, said committee to be known as the Illinois Christian Science Emergency Committee, the functions of said committee being to carry out the spirit of these resolutions, to prepare, circulate and present to the Attorney General of the Commonwealth of Massachusetts a petition requesting him to institute proper proceedings to remove said Trustees, conserve said trust and protect the interests of the beneficiaries thereof, The Mother Church and its members, or said committee shall take such legal, equitable or other action in the premises as they may deem advisable. Said committee is hereby empowered to engage counsel and to incur such proper expense as they may deem necessary any funds contributed therefor, and to perform such other duties as are required of it by this conference; and be it further

RESOLVED, That these resolutions be referred to each of the churches and societies of Christ Scientist in the State of Illinois for their concurrence or disapproval, and that said resolutions shall not be effective until concurred in by a majority of the churches and societies. A notice of such action of said churches and societies shall be given to Mrs. Mattie L. Johnson, the Secretary of this Conference, residing at 816 East Forty-second Street, Chicago; and be it further

RESOLVED, That it be recommended to all of said churches and societies that each church and society in Illinois call a special business meeting at the earliest possible date, but not later than April 10, 1920, for the purpose of considering and taking action on these resolutions and to report thereon without delay to the Secretary of this Conference, as above mentioned.

WHEREAS, The periodicals published by The Christian Science Pub-

lishing Society were designed by our revered Leader, Mary Baker Eddy, to be the official organs of the church; and

WHEREAS, In litigation instituted by the Trustees they have sought and obtained an injunction which restrains The Christian Science Board of Directors from dismissing or in any way controlling the acts of said Trustees as such, and from supervising any of the publications of said Christian Science Publishing Society; and

WHEREAS, The effect of said disobedience of said Trustees and of the said injunction is such that said periodicals are no longer the organs of said church, the Directors of said church having at the present time no voice in such publications; and

WHEREAS, It is the duty of the members of The Mother Church to refuse to subscribe for, read or circulate the periodicals so issued by the said Publishing Society until said periodicals are published in accordance with provisions of the Manual; now, therefore, be it

RESOLVED, That we, the delegates assembled at the conference of Churches of Christ, Scientist, and Christian Science Societies of the State of Illinois, recommend that until said periodicals again become the official organs of the church, all said churches and societies and all practitioners in the State of Illinois withdraw their cards from the Christian Science Journal; that all said churches and societies and all members of The Mother Church withdraw their subscriptions for, and cease to purchase, read or circulate all literature issued by the said Christian Science Publishing Society except the writings of our Leader, Mary Baker Eddy, the concordances, authorized Christian Science lectures, "The Life of Mary Baker Eddy," by Sibyl Wilbur, "The Mother Church," by Joseph Armstrong, pamphlets published prior to the issuance of the injunction above referred to, and such hymnals and quarterlies as may be required.

RESOLVED, That it is the sense of the delegates here assembled, on Friday, April 2, 1920, at the conference of Churches of Christ, Scientist, and Christian Science Societies of Illinois, that we deprecate, deplore and condemn the action of John V. Dittmore in bringing suit against the Christian Science Board of Directors, to nullify the action taken under the Manual of The Mother Church; and further, that we recommend to the Christian Science Churches and Societies in the State of Illinois, that they take similar action; and that they report to the Secretary of this Conference, and further, that copies of this resolution, and of all the other similar resolutions from the various churches and societies in Illinois be forwarded to The Christian Science Board of Direc-

tors, to the Trustees of the Christian Science Publishing Society, and to Mr. John V. Dittmore.

Yours sincerely,

Mattie L. Johnson,
Secretary of Conference.

Mrs. Mattie L. Johnson,
4017 Drexel Boulevard,
Chicago, Illinois.

Q I think I have asked you and you stated that you personally did not draft these resolutions, but you were the Chairman of the meeting where they were voted upon? A. Yes.

Q Did you vote upon the resolutions? A. I did not.

Q Did you vote for any resolution? A. No, sir.

Q Did you take any further action with reference to the adoption of the resolutions than that you have heretofore stated? A. I attended at the Fifteenth Church a meeting where these resolutions were presented for adoption. I spoke in favor of the first resolution.

Q That resolution relates to the bringing of the matter before the Attorney General? A. Yes.

Q I think I forgot to ask you. I asked you a question as to whether any of these resolutions were prepared or suggested or advised, or in any way connected with any suggestion the Directors had made? A. Yes.

Q Was it true in the conferences you attended that they did so offer any advice or suggest the conference? A. They did not.

Q Or have anything to do with calling the Churches or adopting the resolutions? A. They did not.

Q Have you at any time endeavored directly to persuade any member of the Christian Science denomination from subscribing to the publications? A. No, sir; I have talked with some in reference to the subscription; they asked my opinion in reference to it and I told them what I had done; also stated it was a matter for their own decision and determination as to what they should do that I could not advise them, they should act for themselves.

Q Have you yourself at any time acted as counsel for the Mother Church? A. Yes.

Q Will you state under what circumstances? A. I at the present time represent them in a proceeding in our Circuit Court relating to the construction of a will left by Mr. Clark. I think the legacy of \$25,000 is left to The Mother Church. I represent them in a bill that the will depends upon how much the Mother Church receives as to the construction in its legal sense.

Q In any other litigation? A. No, sir. I represent the Laramie estate,

the administrator of the Laramie estate. That is an ancillary proceeding and the will in that estate gives to The Mother Church I think \$20,000.

Q Have you at any time acted as counsel for the Christian Science Publishing Society? A. Yes.

Q What was that litigation? A. A certain firm or corporation in Chicago was publishing pictures of Mrs. Eddy.

MR. WHIPPLE: When was this, please?

A It is difficult for me to say; several years ago; a few years ago.

MR WHIPPLE: It of course was prior to this suit?

THE COURT: You have answered the question by saying you did at some time act as counsel for the Publishing Society.

MR. WHIPPLE: Not since March 1919.

A I think not, Mr. Whipple.

Q Now were you appointed a member of a committee to take any action or seek legal aid in this matter? A. Yes, the first resolution appointed me to act ex officio as Chairman of that conference, a member of the committee.

Q Who were the other members of that committee? A. Mr. James A. Hemingway, Mr. Chauncey L. Jenks, Mrs. Armstrong, Mrs. Goodman. Previously two others had been appointed in the place of Mr. Jenks and Mrs. Goodman, Mr. Hederstrom, I think his name was of Peoria and Mrs. Wilson of Decatur. They both resigned from the Committee.

Q Now what have you done as a member of this committee? A. I assisted in the preparation of a petition to be signed by the Members of the Mother Church, members of the Churches in Illinois, requesting the Attorney General to commence action as outlined in the first resolution.

Q And is this the petition that you assisted in preparing?

THE COURT: The only question is, with respect to the propriety of such an act.

MR. WHIPPLE: There is not any question of it, your Honor. Anything that looked to the orderly proceedings in court for an adjudication by the Court, we have never objected to.

THE COURT: That saves an examination of it.

MR. MORSE: This is a copy of that petition.

Q This is a copy of it, you say? A. Yes, and has some of the original signatures.

MR. WHIPPLE: I do not suppose it is necessary to be offered in evidence.

THE COURT: The propriety of such action of the convention in electing delegates who should undertake to consult with the Attorney General of the State is not an improper action and the Court so rules.

Mr. Morse: I thought your Honor would like to know what language was addressed to the Attorney General.

THE COURT: Not interested. I want to save some time.

Q Now were there other petitions prepared? A. Yes, copies of that petition were circulated, signed and then returned to the Committee.

Q Does this represent the petitions that were sent out to be signed by these people? A. These were the different petitions which were returned signed with the exception of the one which was sent to the attorney General.

Q They represent how many signatures—perhaps not to be accurate—

MR. WHIPPLE: How is that important?

MR. MORSE: I think it is important.

THE COURT: It is of no consequence as I before said, the action referring the matter to the several churches and their action in return—I assume it was a majority action—and the visits of delegates in pursuance of the vote of the convention as confirmed by the churches was a legal proceeding and they are in no way open to criticism on that account.

MORSE:

MR. WHIPPLE: It may be something in the way of explanation of the rising tide.

THE COURT: I am not interested.

MR. MORSE: It may show it is not a matter of persuasion, it must be voluntary. Do I understand your Honor excludes them?

THE COURT: I exclude them as not being at all material.

MR. MORSE: I offer them in the case for whatever they are worth.

Q Now then, did you come to Boston with Mr. Hemingway? A. Yes.

Q What steps did you take as a member of the Committee to carry out the instructions of your Committee? A. We came to you and engaged you and Judge Chase as counsel and then with you and Judge Chase went to see the Attorney General and had a conversation with him looking to the carrying out of that resolution.

Q Now did you at any time call upon the Board of Directors while you were here? A. Yes.

Q Or either of them? A. Yes.

Q Whether or not it was before or after you had consulted counsel and had your interview with the Attorney General and completed your business here? A. It was after we had completed our business as we thought, at that time.

Q Now will you state which of the Board of Directors you say, if you said any individually? A. We called upon Mr. Neal at his home. I think it was on Thursday.

MR. WHIPPLE: You speak of "we". You do not say who. A. I spoke of Mr. Hemingway and myself.

Q Now I will ask you, without going into all the conversation, if there was any conversation at that time with reference to this litigation or what was said with reference, if anything, to your visit here for the purposes for which you came? A. My recollection is that we told Mr. Neal that we had come here to see the Attorney General, but did not go into details and that we discussed generally the cause of Christian Science. My recollection is that there was nothing said at all about the case of Eustace v. Dickey.

Q Was there anything said in consequence of your visit to Mr. Neal—in consequence of your visit to Mr. Neal was there a conference or did you visit the Board of Directors? A. The next morning we called at Mr. Neal's office and asked him if there was any objection on the part of the Board to our seeing and talking with them, that is, paying our respects to them. He said he thought not, they were going to have a meeting at ten o'clock that morning.

Q Did you visit the Directors? A. We did.

Q Will you describe under what circumstances—what was said at that interview? A. Mr. Hemingway and I called there, I think about ten o'clock or 10:30 maybe, at the Board rooms and saw the Clerk of The Mother Church and asked him if we could have an audience with the Board of Directors for the purpose of paying our respects to them and he said he would inquire of them and let us know. After a short time he returned and stated they would be glad to see us. We then went into the Board Room and I think that all the members of the Board were present and we talked generally as we did before of the matters relating to the field and the cause of Christian Science and told them we had just called for the purpose of paying them our respects. I suppose you want to know if the case of Eustace v. Dickey was mentioned?

Q Yes. If anything was said. A. I have no recollection of anything being said about that case. We did tell them of our attendance on the Attorney General.

Q Now something was said in a former hearing before his Honor with reference to Mr. Neal going to Chicago shortly after or before the action was taken by the conference of which you are a member. Did you receive a letter from Mr. Neal at any time stating he was coming to Chicago? A. I did, yes, sir.

Q Is this the letter? A. Yes, that is the letter, dated March 10, 1920.

MR. MORSE: I offer this in evidence.

[Letter marked Exhibit 2.]

MR. WHIPPLE: I have no objection.

MR. MORSE: The letter reads as follows:

March 10, 1920.

Colonel F. A. Bangs,
1st National Bank Building,
Chicago, Illinois.

Dear Mr. Bangs,

It is time now for the Board to consider carefully the selection of readers for the coming three years and before definitely making up my mind on the question of the second reader, I would like to have a few names other than those now being considered for the place.

If you have in mind any women who would meet the requirements in every way, I should be glad to have you send me their names together with facts about them. I am sure you well know without my going very much into detail what those requirements would be, but briefly stated the second reader must be a woman of good personality a first class metaphysician with the experience of a Christian Science practitioner, with a voice equal to being heard and understood by five or six thousand people; she must have had a good education, be well poised and non office seeking.

If there is within your acquaintance at the present time a reader in one of the branch churches whom you believe would meet these requirements, I should be glad to make a trip to that church and take a back seat through one of the Sunday services. Should you know of a good prospect who already has had reader's experience and is not now reading, I would be equally glad to have information regarding her.

It would not do at all for you to speak of this request of mine to any one and I will thank you to keep this matter entirely between ourselves. At your convenience I shall be happy to have you reply.

Yours sincerely,

JAMES A. NEAL.

Q Did you reply to the letter? A. I did, yes. I had no copy of the letter because it was confidential—a confidential communication and I wrote it in long hand.

Q After your reply did Mr. Neal come to Chicago? A. He did, yes.

MR. WHIPPLE: Would you mind having it here this afternoon, Governor?

MR. BATES: We will have it if your Honor thinks it is necessary. It was a personal letter between Mr. Neal and Mr. Bangs.

MR. WHIPPLE: We have issued a subpoena summoning the witness to bring these papers.

A I think I can tell you the substance of it, if you wish.

MR. WHIPPLE: No doubt of it.

MR. BATES: I would be glad to bring it if it is necessary. I understand this was a personal letter between Mr. Neal and Mr. Bangs.

MR. WHIPPLE: One part of it has been put in. I don't understand you object to bringing it.

MR. BATES: Not at all.

A No objection on my part.

Q State what took place in Chicago on the visit of Mr. Neal. By the way, when did he come? A. I was just trying to think of the date. I think it was the latter part of March.

THE COURT: After the meeting of the 25th?

A 1920, your Honor. Mr. Neal called me on the telephone. I was at my office, and he said he was at the LaSalle Hotel and would like to see me and invited me to have lunch with him there. I went to lunch with him, and saw him at the Hotel LaSalle in Chicago on that date.

MR. WHIPPLE: What date was that?

Q Without too much detail, did you call—

MR. WHIPPLE: What date was it?

A It is hard for me to say now, the latter part of March 1920, that is as near as I can give you the date.

Q What was done by you and Mr. Neal with reference, if anything, to looking about for a new reader for the Mother Church? A. We discussed that situation somewhat, the letter which stated what I had written to him, that was discussed. I told him that Miss Paulson, who had been mentioned in that letter was the second reader at the Seventh Church and that Mrs. Archibald, who was also mentioned in that letter had been second reader, who read with me in the Third Church when I was First Reader there. Mrs. Archibald was a very excellent second reader. Miss Paulson in my judgment was the best second reader in Chicago who was at that time reading. Mr. Neal then told me in answer to my question as to Mr. McCracken and said Mr. McCracken was editing a paper in Jerusalem. I think that was the substance of what was said, while we were there, except that I invited him—I told him Mrs. Bangs and I were visiting the various Churches of Christian Science in Chicago, it being the first opportunity we had had, in as much as both of us were then free from work in the churches, and that we had gotten around to the Seventh Church and that I would be very glad indeed to take him in my car with Mrs. Bangs to the Church next Sunday morning, which was the next morning, it was Saturday that he was there. He said he would accept the invitation and the next morning we called for him and together with Mr. and Mrs. Day, friends of ours, we drove to the Seventh Church and attended the services and returned to the LaSalle Hotel.

I think I have already asked you in my previous question, coming directly to this particular occasion, was anything said by you to him with reference to this litigation and the Trustees' litigation and the stopping or ceasing or in any way interfering with

the Publishing-House literature? A. I remember nothing that was said and I think nothing was said; if it was, it was trivial.

Q At a hearing before His Honor, Mr. Whipple stated that he understood that Judge Smith had come to Chicago shortly after the action of one of the churches and subsequently it was reversed. Did you have any interview with Judge Smith in Chicago? A. No, sir; didn't know he had been there.

Q Have you stated, Col. Bangs, as far as you yourself remember, if I have forgotten to ask you in substance all that you remember to have said in reference to this matter? A. So far as I recollect all, with one exception, I think my answer may have been misleading in that case, when Mr. Whipple asked me in reference to these meetings that I attended at the First and Eighth Church. His question might have limited my reply in such a way that it might not be exactly right.

Q Do you wish to correct it? A. Yes, I do. I did tell the members present at that time, at each of those meetings, what in my judgment the Trustees had done relating to the publications and their attitude towards the Board of Directors.

Q And what you have done and said in all these things, whether or not it has been on your own individual judgment and in accordance with your belief in Christian Science? A. It has been what I believed I should do in my duty to God and to the cause of Christian Science and my belief as a Christian.

Q Do you contemplate doing anything more in the future than taking such action as you can with the Attorney General or employing counsel and seeking such legal aid as you may to assist you in the matter? A. My intention is to carry out the directions of the conference relating to the first resolution under which we were appointed a Committee.

THE COURT: May I put one question, before we take a recess. Do you mean by that you intend to confine your activities so far as the Eustace case is concerned to consultation with the Attorney General and following his directions?

A Yes, or bringing such other proceedings as may properly be brought.

MR. MORSE: Thank you, Col. Bangs.

[At this point the Court took a recess.]

Mr. MORSE: Your Honor, I intended in my examination of Colonel Bangs to formally offer the Manual in evidence, as I think that it may be material as tending to show the government of branch churches, how the meetings are called, and its bearing on the facts, as your Honor suggested. I therefore formally make an offer to put it in evidence.

Mr. WHIPPLE: While I do not assent to the proposition that it is material, yet I have no objection to its being offered and considered by your Honor so far as you may think it is material.

THE COURT: I am not at all sure that I haven't one or two other copies.

Mr. MORSE: I have no doubt your Honor has. I felt the formal requirements required me to make a formal offer of it.

THE COURT: You may file it.

Mr. WHIPPLE: Inasmuch as I want to put some questions about it I do not care to object.

Mr. MORSE: That may be marked as an exhibit.

(A copy of the Church Manual is marked "Exhibit 3.")

Cross-Examination

Q (By Mr. Whipple) Colonel Bangs, on the day on which the bill in Eustace v. Dickey was filed, and the injunction issued, you were here in Boston, were you not? A. Yes, sir.

Q In consultation with the directors as their attorney? A. No, sir.

Q Weren't you? A. No, sir.

Q Were you aware that the directors' records indicate that you were here in that capacity? A. I didn't know, sir. I was not here as their attorney. I was here.

Q Your expenses while you were here were paid by them? A. They were, because they sent for me and asked me to come here.

Q To consult about this matter? A. I was consulting, yes.

Q About the matter? A. But not in a legal capacity. At least, I did not so understand it.

Q Were you here on March 24? A. Whatever the date was. I was here at the time the bill was filed.

Q At that time you were asked to remain over until the following morning for further consultation, weren't you? A. I was here two or three days at that time.

Q What is that? A. I was here two or three days at that time.

Q You were asked by the directors to remain over until the following morning, that is, the morning of March 25? A. That I don't remember.

Q For further consultation? A. I don't remember it.

Q Well, if it so appears in the directors' records you wouldn't have any doubt of it, would you? A. No, sir.

Q Then on March 25, the directors had "an interview with Colonel Bangs respecting the conditions between the two Boards," did they not? A. Yes, sir.

Q How long was that interview? A. Well, I don't remember now, I should judge perhaps an hour.

Q And you had come on at their request? A. At their request, with Mr. Frank H. Leonard.

Q Is he an attorney? A. He is not.

Q But both of you had come on?
A. Yes, sir.

Q Who else was present at the interview with you on March 25, between yourself and the directors? A. I think no one but the directors. Judge Smith was present at one interview that we had.

Q He was their counsel. A. He was their counsel, yes, sir.

Q Was Governor Bates present at that interview? A. No, sir.

Q Did you meet him while you were here? A. I did, yes.

Q Where? A. At his office.

Q Which day? A. It was two or three days after the granting of the injunction.

Q At whose request did you go to Governor Bates' office? A. At my own.

Q Of whom did you make the request? A. Judge Smith.

Q And he said you might? A. He made the appointment for me.

Q And there was a consultation about this suit of the trustees? A. Yes, sir. It was not a consultation, but it was—I was giving the Governor some gratuitous advice.

Q Well, whatever you call it, you were a lawyer, and asked to see the Governor, and whether it was a conference or just a gratuitous advisory proceeding of yours perhaps is not material. Now, when your counsel, Mr. Morse, asked you what you had done with reference to this controversy between the directors and the trustees had you forgotten that you were here in consultation with the directors at the time the injunction was served, that thereafter you conferred with them about it and with their counsel, Judge Smith, and that you had thereafter requested the opportunity to give what you call gratuitous advice to Governor Bates? A. I had not forgotten it, because I had not consulted with the directors in reference to that suit after the bill was filed, but I did have a consultation with Governor Bates with reference to it.

Q I am not asking as to whether it was about the suit; but here is a record of an interview with Colonel Bangs respecting the conditions between the Boards—the two Boards which were in litigation—and you said that it took about an hour? A. I should judge so.

Q And Judge Smith was present? A. I am not sure that Judge Smith was present at that interview.

Q Had you forgotten that activity of yours with respect to the relations between the two Boards when your counsel examined you on the direct examination? A. I had overlooked it, yes.

Q Had you overlooked the fact that you had sought Governor Bates a few days later, to give him what you have called gratuitous advice on the situation? A. It did not occur to me that I was here—

Q Had you forgotten it? A. Yes, sir.

Q Yes. You had forgotten that activity? A. Yes, sir.

Q You were then counsel for the Board—certainly in some matters?

A At that time I think not.

Q But they have retained you since? A. I think I was not counsel for the Board at that time

Q Have they retained you since? A. In the matters which I speak of I represent The Mother Church.

Q Well, the directors acted for The Mother Church, did they not?

A They did, yes, sir.

Q The Mother Church didn't send you word except as through the directors or their attorney? A. Mr. Norwood sent me word with reference to it.

Q Who is Mr. Norwood? A. He is an attorney here, who I understand represents the Board of Directors of The Mother Church.

Q When did Mr. Norwood retain you in behalf of The Mother Church in the activities which you describe? A. That was some time after this bill was filed.

Q How long after? A. I can't tell you because I don't know.

Q Haven't you the letter? A. I probably have at home.

Q When you came on here after going to your home, for doing the work that you had to do on account of which the case was postponed, didn't you bring your correspondence here—
A. I did not.

Q —with the directors and with their counsel? A. Not before December 1, 1919.

Q None of it before that time? A. No, sir.

Q Have you brought it all since that date? A. I think it is all here.

Q Why did you fail to bring the earlier correspondence? You certainly brought a letter here to the trustees long before—

A The subpoena which you served upon me called for the letters from December 1, 1919, on.

Q Yes, and nothing earlier than that; and that is why you didn't bring it? A. That is the reason I didn't bring it.

Q Can you fix the season of the year when you were retained by Mr. Norwood in behalf of the directors? A. No, sir; I cannot.

Q And you are now their counsel, are you not? A. In those particulars I am.

Q Have you been paid on account? A. No, sir.

Q Nothing on account? A. No, sir.

Q How much money have you received from the Board of Directors since March 25? A. Mr. Whipple, I have overlooked one thing in your questioning. You are speaking of having been paid. I was paid some money. I was paid \$250, and that was for the services of a young man in

my employ making an investigation in reference to Mr. Rowlands.

Q Well, we will come to that in a moment. I want to know what money you have been paid by the directors since March 25.

A That is all, with the exception of the expenses to and from Boston at the time mentioned.

Q How much were those? A. I can't tell you. They included Mr. Leonard's expenses as well as my own.

Q Over \$400? A. They were about \$400, I think.

Q \$411.70? A. Well, I can't tell you the exact amount.

Q Something over \$400. Now, going on, on March 26, the next day after the injunction, you had two interviews with the Board of Directors, did you not? A. I couldn't tell you the dates, or whether there were two.

Q Whether they were following the service of the injunction?

A Well, I don't know.

Q The day following the service of the injunction? A. I couldn't tell you whether I did have two or not.

Q If the directors' records show this memorandum, "Interview with Colonel Bangs in connection with the local situation," and then at a later part of the day, "Interview with Colonel Bangs and Frank Leonard, Mr. Leonard reported on his visit to New York City," you would have no doubt that you had two interviews?

A I should say that that was so.

Q Did you hear the mission on which Leonard was sent to New York City? A. No, sir. If I did I have forgotten it.

Q You didn't know what he went over for, after the injunction was served or after he reported? A. No, sir, I do not.

Q No memory about it? A. No, sir. I know he went to New York at the request of the Board of Directors.

Q You know he did go to New York at the request of the directors?

A Yes.

Q After service of the injunction? A. Well, I couldn't say whether it was after service of the injunction or not.

Q Well, it was on the occasion of your visit here? A. But we were here before the bill was filed.

Q But it was after the conference with regard to the differences between the trustees and the directors? A. Yes.

Q And you didn't hear what they asked Leonard to go over to New York for? A. I don't think I did; if I did I have forgotten.

Q And although Leonard came on with you, he did not tell you what he went to New York for when he came back? A. I think not.

Q Now, on March 27 did you have another interview with the directors at that time? A. I can't remember the dates, I don't know.

Q Well, that is two days after the service of the injunction. You have been asked about your activities in this matter. You have been asked by your own counsel, and now I am trying to refresh your recollection as to activities going entirely beyond what you have testified to. Didn't you come here prepared to state what activities you had indulged in, in this matter? A. No, sir.

Q Were the questions which your counsel put to you on that subject an entire surprise to you? A. No, sir. Oh, you mean now?

Q Yes. A. Yes, sir; I did come prepared.

Q And had forgotten or overlooked— A. I thought you referred to conferences with the directors.

Q And had forgotten or overlooked these interviews which I have now reminded you of? A. Oh, the interview when they informed me—

Q I am not speaking of that. I am speaking of several. I am speaking of the interview on March 25 respecting the conditions between the Boards, and the interview on March 26 in connection with the local situation, and the interview on March 26 with Colonel Bangs and Frank Leonard, at which the directors say that Mr. Leonard reported on his visit to New York City, and another one on March 27 when Colonel Bangs and Frank Leonard of Chicago came for an interview with the directors. Have you forgotten all those? A. I have not now, no, sir.

Q Had you forgotten them all when you were asked by your counsel to tell of your activities in this matter? A. I overlooked them.

Mr. MORSE. I object, if your Honor please.

The COURT. He has answered the question.

Mr. MORSE. I think he is asking before the filing of the bill.

Mr. WHIPPLE. The bill was filed on March 25, and the various interviews I am asking about are on that day or after.

Q When was your next communication with the directors, after you went home on this occasion? A. It might be possibly two or three—

Q What is the next thing you recollect of? A. I think the next thing was the sending of the amount of the expense incident to the trip to Boston.

Q You haven't that letter? A. What is that?

Q You haven't that letter, have you? A. No, sir.

Mr. WHIPPLE. Will you give us a copy of it, Governor? I will give you notice that I would like a copy of that letter which you sent to him as to expenses, so as to see what it was for. We have the clerk of the Board under subpoena here, with a request that he bring the correspondence.

Q Very well; what was next? A. And then their sending me a check for the amount of it.

Q What next? A. I don't recollect what was next.

Q Now, you said that you performed some service for the directors looking up evidence about Mr. Rowlands? A. That was done by a young man in my office.

Q By your direction? A. Oh, yes.

Q Who sent you the communication requesting you to do that?

A I think I received that from Judge Smith.

Q When? A. I think it was in the summer following the filing of the bill.

Q And while hearings were being conducted before Judge Dodge last summer? A. I don't know whether hearings were being conducted at that time or not.

Q Had hearings been begun? A. That I do not know.

Q Have you that letter from Judge Smith? A. I am not sure. I looked for it and I was unable to find it.

Mr. WHIPPLE. I will ask you to produce a copy of that, if you please, Governor—that correspondence with Colonel Bangs after securing evidence against Mr. Rowlands in Chicago.

Q You knew that the evidence that you succeeded in getting was presented here in court, did you not? A. I knew that reports were made.

Q What? A. I knew that reports were made by this young man for Judge Smith.

Q How did you know? A. Because I saw them.

Q Saw them before he sent them? A. Yes, sir. No, I saw them after they were sent.

Q Where? A. In my office—copies.

Q Oh, you saw copies of them? A. Yes.

Q Do you remember whom he consulted with out there? A. No, I do not. I remember that he consulted—

Q With Mr. Hess, wasn't it? A. That I couldn't say.

Q What? A. I couldn't tell you.

Q You know Mr. Hess, don't you, in the Harvester office? A. Oh, I know Mr. Hess very well.

Q Did you know that the evidence sought was from the Harvester office as to certain business activities of Mr. Rowlands? A. No, sir.

Q You didn't know about that? A. No, sir.

Q Have you copies of those reports? A. I think I have at home.

Q But you haven't it here? A. No, sir.

Q Was it July or August that this was sent? A. I couldn't tell you.

Q What is your best recollection? A. I have no recollection on it.

Q Was the young man who did this service in your employ? A. He was.

Q So that the money was paid to you? A. Yes, sir.

Q The \$250, his fee, was paid to you? A. Yes, sir.

Q Not to him? A. That is correct.

Q Because he had his salary from you. Where were you at the time he was engaged in these activities? A. I think part of the time I was on my vacation.

Q You set him at them, did you not? A. You mean his acting under my instruction?

Q Yes. A. Oh, certainly he was; he was acting under my instructions.

Q You told him what to do. A. Why, I gave him general instructions when the letter was received, and then he acted.

Q Now, when did you get your pay for that? A. That I couldn't tell you, although I think it was along some time in the fall.

Q A check was sent to you? A. Yes, sir.

Q By whom? A. I think the treasurer of The Mother Church. I am not sure about that.

Q With a letter? A. Well, I am not sure that there was any letter with it.

Q Did you have correspondence with Judge Smith on this subject of getting evidence in Eustace v. Dickey, besides his original letter? A. I recollect none now except the reports. There may have been some.

Mr. WHIPPLE. Then I would like to have those reports, so that we can see the extent that the activities covered.

Q When, with reference to your getting the \$250 for that service were you retained by Mr. Norwood in this—what did you say the case was? A. In the Clark will?

Q Clark will. A. Yes.

Q Involving the construction of a will, to determine whether The Mother Church would get \$25,000 or less? A. Yes. When was that letter received?

Q Yes, about when? A. Well, I would only guess at it; I could not tell you at all.

Q Give us your best recollection. A. Well, it is since the commencement of this action of Eustace v. Dickey.

Q Oh, well, cannot you fix it better than that? A. No, I can't, except as I have told you before.

Q Was it before or after Judge Smith retained you to do work in Eustace v. Dickey? A. I would only guess at it, I could not tell you.

Q Haven't you any way of finding out that? A. Yes, sir.

Q How? A. Why, by telegraphing.

Q Well, couldn't you do it by getting hold of Mr. Norwood in the Intermission? A. Yes, Mr. Norwood would know, of course.

Mr. WHIPPLE. Try and see.

Q Now, that is an important professional commission, isn't it? A. I so consider it.

Q A case of substantial importance? A. Yes, sir.

Q Which has been entrusted to you by the directors? A. Yes, sir.

Q And which is now in your charge? A. Yes, sir.

Q You have entered your appearance for the directors or for The Mother Church in the case? A. For The Mother Church, I have.

Q You have? A. Yes, sir.

Q And actively engaged in the litigation? A. Yes, sir.

Q Can you tell when you entered your appearance? A. No, I can't, because I don't know the return day of the writ.

Q Can you tell whether it was this year or last? A. It was this year; that is, 1919.

Q Well, it is 1920 now? A. Yes, it is.

Q Was it this year, 1920? A. No, 1919.

Q So it was some time perhaps the latter part of last year, or some time last year? A. As I stated to you, I would only guess at it in answering you.

Q Very well. Now, is that all the services that you have performed for the directors, either directly or indirectly?

A. So far as I remember.

Q How about the committee on publication out there? A. I represented the committee on publication during the year 1919.

Q Who is the committee on publication out there? A. A Mr. White.

Q And whose subordinate is he? A. Well, I don't know as he is anyone's subordinate. I think Judge Smith has jurisdiction relating to him.

Q Judge Smith? A. Yes.

Q Judge Smith is the committee on publication? A. Yes.

Q By appointment of the directors? A. I suppose so.

Q And Mr. White reports to him? He is state committee on publication, is he not? A. As to whether or not Mr. White reports to him, I can't say.

Q Who appoints him? A. He is appointed by the Churches in Illinois.

Q Really? A. Yes.

Q And subject to Judge Smith's direction, is he not,—who is the principal? A. I say I don't know that he is.

Q Who retained you as counsel for the committee on publication in Illinois? A. Mr. Moses, who was at that time the committee on publication in Illinois.

Q Who is now? A. Mr. White.

Q Did Mr. Moses pay you? A. He did.

Q From whom did the check come? A. It came from him.

Q Are you sure? A. Quite sure.

Q And you rendered the bill to him? A. I did.

Q Do you know where Mr. Moses gets his money to pay the counsel fees? A. Yes, sir.

Q From whom? A. From the Churches of Illinois.

Q And not from the directors? A. Not from the directors.

Q Who is the present committee on publication? A. Mr. White.

Q Have you acted for him? A. I have done some work for him.

Q When? A. Oh, in 1920.

Q What work? A. I have consulted with him in reference to certain proceedings in the constitutional convention which is being held in the state of Illinois. There was an attempt being made by a certain organization of doctors to prohibit the practice of Christian Science, through a bill to be introduced, or proposition to be introduced in the constitutional convention of Illinois. And he consulted me in reference to that matter.

Q Anything else? A. He also consulted me in reference to the obtaining of a permit to allow the Monitor to be displayed—the Christian Science Monitor—to be displayed upon the news stands in Chicago, there being an ordinance there prohibiting any newspaper being displayed for sale on the news stands published outside the city of Chicago.

Q Anything else? A. I think of nothing else.

Q When was it that he asked you to assist in having the Monitor displayed on the news stands—or was it to prevent its being displayed? A. I think that was in 1920; I think it was in January.

Q Was it for the purpose of having it displayed, or to prevent it? A. It was for the purpose of having it displayed.

Q Yes, I thought so. For the purpose of having it displayed?

A. Yes, sir.

Q In January, 1920? A. In 1920.

Q So then you were active to get the Monitor on sale where it could be purchased by people? A. I was not; no, sir.

Q Didn't you help on that? A. I did not.

Q I thought you said he consulted you for that purpose? A. He did so.

Q And did you decline to do it? A. No, I didn't decline to do it, because it was taken out of my hands by another committee.

Q Who was the other committee? A. That was the distribution committee in Chicago.

Q But you were ready to do it? A. Yes, I would have been perfectly willing to have done what I could to assist him in that direction.

Q To promote the circulation of the Monitor? A. Yes, sir.

Q What else? A. I think that is all.

Q I beg your pardon. A. I think that is all.

Q What is this other will case you spoke of? A. That is what is known as the Laramine estate.

Q Who retained you there? A. Why, I was retained there by the administrator of the estate.

Q Well, you are not acting for the directors there? A. Yes, in a certain sense I am.

Q What is the sense? A. The sense is that they are to receive under the will of Mrs. Laramine a legacy of, I think, \$20,000.

Q When were you retained by the directors there, and by whom acting for the directors. A. Why, I don't know as I was retained by the directors.

Q From whom have you had your communications regarding it?

A. I have had communications from Mr. Norwood.

Q On the Laramine will? A. Yes. But I was not retained by Mr. Norwood in the matter.

Q When? A. I think it was last summer.

Q When were you permitted to represent the directors, as you say, "in a certain sense," in that matter? A. I should say it was last summer.

Q And you have been ever since? A. And I am continuing to act as attorney for the administrator of the estate, yes.

Q And in a certain sense for the directors? A. I think so. I should so construe it.

Q So in 1919 and 1920 you have been continuously counsel for the committee on publication, state committee on publication, of which Judge Smith is the head—that is true? A. Yes.

Q And you have been since the date of the injunction almost continuously in the employ of the directors on some one legal matter or other? A. I should say continuously.

Q Up to the present time? A. And The Mother Church—in the matters which I have told you about.

Q Did you go to Mr. Morrison personally to get evidence in regard to Mr. Rowlands? A. Mr. Morrison?

Q Yes. A. I did not.

Q Now coming down to the meetings of churches. What was the first meeting that you attended of any church where they considered the question of the cancellation of subscriptions or withdrawal of cards from the publications of the Publishing Society? A. The Fifteenth Church of Christ, Scientist, of Chicago, where I made the motion that I spoke of in my direct examination.

Q When was that? A. That was in January, 1920.

Q Can you tell what part of January? A. Yes, the fore part.

Q Are you a member of that Church? A. I am.

Q And that was at a business meeting of the Church, was it? A. It was.

Q And the motion was ruled out of order? A. It was.

Q And you did not press the matter? A. I did not.

Q What was the next meeting you attended? Pardon me, what was the motion you made? A. The motion was made that the Board of Directors of Fifteenth Church of Christ, Scientist, of Chicago be instructed to call

a conference committee meeting of the Chicago Churches for the purpose of considering the wisdom of cancelling subscriptions to the periodicals published by the Christian Science Publishing Society.

Q No one had ever made a motion like that in the Fifteenth Church before, had they? A. Not that I had heard.

Q The first man to do it was a man who was under retainer by the directors in the way you have described? A. I made the motion.

Q Yes, and you were under retainer by the directors in the way you have described? A. I was then serving in the capacity which I have mentioned as attorney for The Mother Church.

Q And counsel for the committee on publication? A. I would not say that I was serving as counsel at that time, because—

Q I thought you said you had served continuously since—

A I would not say that I had served for the publication committee continuously, because Mr. White has had another attorney, a Judge Hill of Illinois.

Q Very well. It is enough, perhaps, that you had served continuously as counsel for the directors in the way that you have described. Upon the Church refusing to entertain that motion, what did you do next? A. In what regard, Mr. Whipple?

Q In regard to preventing people—or encouraging people to cancel publications, and thereby to injure the Publishing Society? A. I don't know that I did anything; I don't now remember that I did.

Q Didn't you? Did you have correspondence with any of this committee in Boston, so-called committee,—Employment and Aid Committee, and the Information Committee, who were recently enjoined by this court? A. Perhaps if you will name some of the individuals I can tell. From the description of the committees I cannot tell.

Q Name some of the men you have had letters from. A. I have had letters from Mr. Cudworth.

Q Yes, he is chairman of that committee. Have you those letters? A. No, sir. My counsel has them; that is, he has copies of those letters.

Q Has he copies of your replies? A. The replies are the ones that I am speaking of. His letters I am unable to find; they were probably destroyed at the time they were received.

MR. WHIPPLE. I should like those copies of your replies.

Q You spoke of certain letters as not being copied because they were confidential letters. Was that your custom, not to keep copies of confidential letters? A. These were not confidential.

Q How many letters did you receive from Mr. Cudworth? A. Why,

I can't tell you the number. Mr. Morse has them.

Q You know that Mr. Cudworth is among those who have been enjoined? A. I have seen his name in the proceedings here.

Q And you know that immediately upon the injunction the proceedings at the Little Building where they were conducting them were closed, don't you? A. No, I didn't know it.

Q Well, you haven't been to the Little Building office, have you? A. Why, no; I had no occasion to go.

Q The occasion had passed? A. It never was.

Q Well, if it never was it has passed? A. It never has passed, because it never existed.

Q Whom else did you communicate with here in Boston, since January? How about Richard J. Davis? A. I never communicated with him.

Q And you heard nothing from him? A. No, I know nothing about him.

Q Well, tell us some of the others. A. I don't think there are any others except Mr. Neal. I don't now recollect; if you will name them I will try to recollect.

Q Oh, no, no; what I want, and what I think the Court wants, is your memory. A. I am not sure, except they possibly might be the members of the Board of Directors.

Q Have you communicated with Martin Jackson of New York? A. I think not. I have had some communications from him.

Q Yes, you have had several from him? A. No.

Q I beg your pardon? A. No.

Q You say you have had? A. Had several? No.

Q I thought you said you had several. A. I have had some communications from him, but not "several."

Q I see. Some communications from him on what subject? A. He wired me—

Q Just the subject—unless you can produce the communication. A. No, I can't produce it.

Q All right. Now I don't ask the contents, I ask the subject. A. Why, he asked me to join with Mr. Dawson in his Bill of Complaint.

Q Anything else than that? A. I think that is all.

Q Anything in regard to cancellations? A. No, I think not. I am very sure there wasn't anything about cancellations.

Q You haven't any of the communications he sent you? A. No, sir.

Q Did you reply to any of them? A. That I do not recollect. I think I telegraphed Mr. Dawson. I don't know that I telegraphed to Mr. Jackson.

Q You haven't any letters or copies of letters or telegrams here? A. From Mr. Jackson?

Q Of intercommunication with Mr. Jackson. A. No, sir.

Q You didn't bring them? A. No, sir.

Q You knew that Jackson purported to be chairman of a committee constituted in some way in New York? A. No, sir; I did not.

Q You didn't know that? A. No, sir.

Q You knew Mr. Dawson, when you communicated with him, as a distinguished member of the bar of New York, did you not?

A I didn't know that Mr. Dawson was a member of the bar of New York at the time I communicated with him.

Q When you communicated with him? A. I thought he was a member of the bar of Massachusetts.

Q Did he invite you to join the Hulin petition? A. Mr. Dawson?

Q Yes. A. I think not.

Q Did Jackson? A. That's my recollection.

Q And you gave your reply to Mr. Dawson? A. I think so. I think that was the request.

Q Have you ever met Mr. Jackson? A. I never have.

Q Now coming to the Church meetings. What is the next one you attended after your motion in the Fifteenth Church was declared out of order? A. Why, a meeting of the members of Fifteenth Church.

Q When? A. Held a week later.

Q What did you do there? A. Nothing.

Q You didn't say anything? A. Not a word.

Q It was a business meeting. A. Yes, sir.

Q All right. What was your next activity—in meetings of Chicago churches? A. I attended no meeting of any Church until I attended the conference committee meeting, which was held April 2.

Q Now, that was after Mr. Neal had been to Chicago? A. Yes, sir.

Q Looking for a Reader? A. He had been there for that purpose.

MR. WHIPPLE. Looking for a Reader, yes.

Q And you had not attempted any activity or participated in anything in the meantime after your futile attempt at the first meeting you have described and your silence at the second meeting of the Fifteenth Church? A. I now recollect none; that is, I attended no meetings. I think that was the question you asked.

MR. WHIPPLE. Yes, that is right.

Q Now, the Manual has been put in. Will you, being familiar with it, be good enough to turn to the provision of the Manual that deals with conferences of Churches? Perhaps you are not familiar. Can you turn to it readily? A. I think I can. It is Section 1 of Article XXIII of the Manual.

Q That is right. Now, what does that provide? A. Do you wish it read?

Q Yes, with his Honor's permission. A. [Reading]:

"Local Self-government. Section 1. The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other.

"Each Church of Christ, Scientist, shall have its own form of government. No conference of churches shall be held, unless it be when our churches, located in the same State, convene to confer on a statute of said State, or to confer harmoniously on individual unity and action of the churches in said State."

Q That's the section under which you understood the conference was held? A. It was held under that section.

Q Not to confer on a statute of the State? A. No, sir.

Q But "to confer harmoniously on individual unity and action of the churches in said State"? A. Yes, sir.

Q You were asked to attend? A. I was asked to serve as a delegate to that conference.

Q And then you were asked to serve as chairman? A. I was elected chairman of the conference.

Q By whom? A. By the members of the conference.

Q By oral vote? A. By an oral vote.

Q Then you assumed the chair? A. I did.

Q Do you remember pretty well what happened at that meeting? A. I think I do.

Q Do you remember something being said about the meeting being conducted under the provisions of the Manual or Roberts Rules of Order? A. Yes.

Q What was said about that, and who said it? A. There was a motion made that Roberts Rules of Order and the Manual govern the proceedings of that conference.

Q Who made that? A. I do not now remember.

Q What? A. I do not now remember.

Q What did you say to that? A. The motion was either withdrawn or it was put and not carried.

Q And how was the matter left? A. My recollection is that the motion was withdrawn.

-Q Well, what rules of order did you act on? A. The statement was made that they could depend upon the fairness of the chair.

Q That is, that they should not hold a meeting under the provisions either of the Manual or of Roberts Rules of Order, but that everything should be left to the decision of the chair? A. No, sir.

Q Well, they did not adopt any rules of order? A. They did not.

Q And the motion that it be conducted under the terms of the Manual was either defeated or withdrawn? A. Yes, sir.

Q And the motion that it should be conducted under Roberts Rules of Order was either defeated or with-

drawn? A. It was but one motion that was made.

Q And the statement was made that matters should be decided according to the fairness of the chair? A. No, sir.

Q What was the statement? A. The statement was that the delegates could trust the fairness of the chair.

Q Could trust the fairness of the chair. No vote was taken on that? A. No, sir.

Q No, that was the statement. Now, did someone object to you as chairman? A. Yes, sir.

Q On what ground? A. On the ground that I was of counsel for the Board of Directors of The Mother Church.

Q Who objected to you as chairman? A. Mr. Morrison.

Q What is that? A. Mr. Morrison.

Q Mr. Morrison objected. Was any vote put in connection with it? A. Yes, sir.

Q What was the vote, and who framed it? A. A motion that I be chosen as the chairman of the meeting was put and carried.

Q Orally? A. An oral vote, yes.

Q Did Mr. Morrison discuss his objection? A. He did not.

Q He just said that it was not proper for you to preside because you were of counsel? A. He said that that was his objection; that he had no objection to me personally.

Q Who overruled him? A. Why, I should judge the vote overruled him.

Q You mean the motion was put and you were elected in spite of it? A. I was elected.

Q Well, not because of it, very likely? A. I wouldn't say "in spite of it," Mr. Whipple.

Q Now, then, there was a Mr. Shield there, wasn't there?

A Yes, Mr. Jacob Shield.

Q A member of what is known as the Welfare Committee?

A Yes, sir.

Q Appointed by the directors? A. Yes, sir.

Q Last June? A. Yes, sir.

Q Who have recently made a report which has been published in all, or most of, the newspapers? A. I understand that it has made such a report.

Q Haven't you seen it? A. I have a copy of it, but have not yet read it.

Q But you understand that he with the others has made a report. Now, he tried to interpose something in the proceedings, did he not? A. He not only tried, he did.

Q He wanted to read something, didn't he? A. He made quite a long speech, and stated that he held no brief for the trustees, that he was not there to plead their cause; that we should consider what these men had done in the past, and not devote our entire attention to their derelictions and misdeeds; that he had given the matter considerable thought before

coming to the conference; that he had at his own expense and without consulting with anyone else sent a long telegram, and I think he said of 400 words, to the trustees in Boston, asking them in substance if they could be healed of their disobedience; and that he had received from the trustees a long telegram in reply; and that those telegrams were there and he would produce them if the delegates desired.

Q Did the chair rule on it? A. A motion was made that the telegrams be presented and read to the conference; and after discussion the motion was put and carried.

Q Were they read? A. The telegrams were not read, because after that a motion was made to reconsider, and that motion prevailed. And then after that motion prevailed Mr. Shield requested that his telegrams be returned to him and that they be not read. So they were not read.

Q That is, after the vote had been passed, as you say, that they should not. And therefore what the trustees had to say on this subject was not read to the meeting? A. In their telegram?

Q Yes. A. It was not read.

Q Now, did you read these resolutions to the church before they were passed? A. No, sir; not to any church.

Q Who did? A. They were read in Fifteenth Church of Christ—

Q I should have said "the conference." Did you read them to the conference? A. I did not.

Q Who did? A. The first resolution was read by Mr. Jenks.

Q Who is he? A. Mr. Jenks is a lawyer of Chicago.

Q One of your committee? A. He is a member of it now.

Q Had your committee then been appointed? A. It had not.

Q When was your committee appointed? A. It was appointed just before the adjournment of the conference, in pursuance of the provisions of the first resolution adopted.

Q Who were they? A. The committee at that time consisted of myself as chairman,—or rather I was not chairman then, I have been elected since as chairman; Mr. James A. Hemingway, Mrs. Wilson, Mr. Hedstrum, and one other—the name has gone from me just at this moment.

Q Who declined to serve? A. Mrs. Wilson and Mr. Hedstrum.

Q How soon did they decline? A. Well, very shortly after.

Q They were present at the meeting, were they not? A. Yes.

Q To whom did they present their refusal to serve? A. Mr. Hedstrum gave me his resignation; handed it to me at my office.

Q Have you it? A. I have not.

Q Or a copy of it? A. No, sir. And Mrs. Wilson sent her resignation from Decatur by letter.

Q Have you that letter? A. No, sir.

Q They gave reasons, did they not?

A. Mr. Hedstrum, I think, gave as a reason that he could not very well attend to the matter.

Q Didn't he give a reason beyond that, sir? A. No, sir.

Q Didn't he say that he could not serve because this thing was a "frame-up"? A. He did not.

Q Neither directly nor indirectly? A. Neither directly nor indirectly.

Q Did you appoint him? A. When?

Q Any time? A. On the committee?

Q Yes. A. Yes, sir.

Q You appointed him at the meeting, did you not? A. I did.

Q And who appointed Mrs. Wilson? A. I did.

Q And you do not produce either of their letters? A. I haven't them.

Q Didn't they give reasons why they would not serve? A. Mrs. Wilson gave reasons in her letter; Mr. Hedstrum did not, other than I have told you.

Q Do you remember the reasons that Mrs. Wilson gave in her letter? A. Yes, I do.

Q Will you send for the letter? A. Yes.

Q What were her reasons? A. If we are going to have the letter I would rather not give them now.

Q What were the reasons stated in her letter? A. I don't want to state them if you are going to have the letter. If you want the letter I think it is the better evidence.

Q I want the letter to correct any error, merely. A. As I understand and remember it, it was in substance that she felt that we were not willing to listen to her reasons as a committee, and that we saw in this resolu-

tion only the right to go to the Attorney General of this State and petition him to file a petition to remove the trustees, and that we would not listen to anything else. Now, that is my recollection of what she said in that letter, the substance of it.

Q At all events, she declined to serve? A. Yes, she declined to serve.

Q And not on the ground that she was too busy? A. Oh, no; she wasn't too busy.

The COURT. Stop here till two o'clock.

[Recess till 2 o'clock P. M.]

AFTERNOON SESSION

The Court came in at 2:25.

THE COURT: This thought has been suggested, that it might be wise in view of the residence of all the parties, to take the testimony, if everybody consents, and then use it as far as may be necessary in the form which the reporter may give it to us later on. If that meets with everybody's approval I will continue to hear it and save calling the witnesses again.

MR. DAWSON: I think—

MR. WHIPPLE: I think that is an excellent idea. We would like to go ahead. I beg your pardon.

MR. DAWSON: I was going to suggest the same difficulty that was suggested inside, that Mr. Dodge is not here. I suppose you would want a unanimous consent.

THE COURT: Will some one undertake to communicate with Mr. Dodge.

MR. WHIPPLE: It does not need unanimous consent, I suppose.

THE COURT: It does not require it, but it would be well to have it.

MR. CHOATE: We ought to have opportunity to file our answers before we put in our evidence.

THE COURT: Before you take any further testimony of anybody?

MR. CHOATE: Yes.

THE COURT: The case stands continued until the 22nd for filing further pleadings in the case. The hearing on the evidence will be resumed on the 24th.

MR. WHIPPLE: That means the evidence so far as taken will stand as if taken upon the merits, when the case is continued for hearing on the merits.

THE COURT: That may well be so.

MR. WHIPPLE: With that understanding, when the case comes on it will come on for hearing upon the merits, or after the pleadings are settled and the legal questions raised by the pleadings are settled, and then proceed with the hearing upon the merits as if the hearing upon the merits had begun this morning?

THE COURT: Yes.

MR. WHIPPLE: And at that time Judge Chase's suggestion that the stenographer be appointed as Commissioner will be dealt with?

THE COURT: I shall make the appointment at that time. That is the real reason why I am making this order now, I saw no way to protect Judge Chase's client.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Friday, May 21, 1920

BOSTON, Massachusetts — Further arguments in the case of Eustace et al v. Harney et al were heard, Friday, May 21, 1920, before Justice Pierce, as follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. IN EQUITY

EUSTACE ET AL

v.

HARNEY ET ALS.

Before Mr. Justice Pierce

Boston, May 21, 1920.

Appearances:

William M. Morse, Esq.,
Frederick L. Chase, Esq.,
Robert G. Dodge, Esq.,
William Frye White, Esq.,
Sherman L. Whipple, Esq.,
Lothrop Withington, Esq.,

Frederick H. Nash, Esq.,
Robert E. Buffum, Esq.,
William G. Thompson, Esq.,

MR. MORSE: May it please your Honor, counsel thought they would like to come before your Honor to-day to see if they can get some information or idea particularly as to the resumption of the hearing on Monday. Your Honor remembers the pleadings in this case were to be completed by the 22nd and the hearing to be on the 24th. Our clients are in Chicago and of course ready to come if we are going on with the hearing, but on conferring with counsel I hear there has been a motion filed in this case to send it to a master, that there are various other motions which are going to be called up before your Honor on Monday morning and it is likely to be hearings take place with a number of witnesses which would perhaps supersede the hearing that was continued, therefore I thought we would

like to know—to come before the Court and have counsel state their respective positions and see if we can get some information as to whether our clients need to come on.

THE COURT: Perhaps I may speak roughly and say, "Next"!

MR. MORSE: I had not arranged the order of things. They all agreed to come and they all had certain statements to make.

THE COURT: Perhaps you have an idea who should be called upon.

MR. MORSE: I understand Mr. Parker has filed a motion which he wishes to take up on Monday morning; also Mr. Dodge.

MR. PARKER: I accept the invitation. I filed a motion for a master, your Honor, because my conception of the defence of my particular client involves the taking of a large number of depositions and the hearing perhaps of a large number of witnesses.

I do not assume your Honor would want to hear them, as the case is one distinctly to be sent to a master and I know all the attorneys for the defendants—a large number of them sitting here—agree with me. The case clearly raises the issue why churches all over the country have cancelled their subscriptions. I have filed depositions as I have said. I also find it involves the question of the resignation of the employees and there are any where from 50 to 100 of them here and I desire to take their testimony. It would mean the taking of a good deal of testimony and it seemed to me distinctly a case to go to a master. I have filed interrogatories to take the depositions of 384 churches outside of Massachusetts, some of them outside the United States. We did not file a motion to take depositions of any societies, because the societies are not purchasers of the literature to any extent, but each church maintains a reading room where literature is sold and is a purchaser to a large extent. I now have letters from some 440 churches which cancelled their subscriptions and I have depositions ready for some 380 filed, so I filed last Monday a motion to send the case to a master. I understood I could not bring up that motion until after the pleadings were completed. I didn't want anybody to say I was dilatory so I have notified them that I would bring it up when we came in on Monday morning. I also have a motion to have the injunction against my particular client which has already been allowed, dissolved.

THE COURT: I apprehend from what you say that you construe the bill as an original bill against your client, although its effect may be to supplement the relief that is sought in the first bill and as it seeks specific relief even to include damages against your client, you are entitled to have this matter determined. Am I right in that?

MR. PARKER: You are, absolutely.

THE COURT: It is not a pure bill for injunction.

MR. PARKER: Your Honor will recall you raised that point when we were in chambers and Mr. Whipple immediately remarked that the allegation in damages could not be disregarded and insisted upon its retention.

THE COURT: I simply wanted to understand your position.

MR. DODGE: If your Honor please, the principal question is whether I should notify—

THE COURT: I believe you had no opportunity to be heard before.

MR. DODGE: Except a moment in chambers. The question is whether I should ask them all to be here on Monday. It seemed to me very clear that for two separate lines of reasons we should probably not have a hearing on the merits Monday. In the first place there are motions to dis-

solve the injunction; there are demurrers which may perhaps be presented; there is Mr. Parker's motion for a master. Those furnish the first set of reasons. The second is the fact that the number of witnesses which are to be heard in this case is very large when we come to the trial on the merits. Not only all the defendants, 12 or 15 in number, but many others. I felt that probably it would never be tried before the Court upon its merits.

MR. WHITE: If your Honor please, it occurs to me there is another very good reason why the case should go to the master, among other things. In the bill in this case Mr. Whipple has pleaded all the averments of the bill in *Eustace v. Dickey*. I think issue has been joined, or will be joined by all these defendants on that bill; and further than that, there has been a cross bill filed. I assume the case would not be heard piecemeal on the bill and then at some other time on the cross bill, but the bill and cross bill should be heard together; that is the another reason why the matter should be sent to the master and heard at one time.

MR. NASH: My position, if your Honor please, is practically the same as Mr. Dodge's, with the exception that our client is residing outside the State of Massachusetts and if there is to be a hearing on the merits on Monday I shall have to bring him here. It seems to me that under all the circumstances it would be agreeable to us if your Honor would indicate that you should send the case to a master to have a hearing on the merits and take up next Monday only these interlocutory matters.

THE COURT: Now, Mr. Whipple.

MR. WHIPPLE: I was just wondering whether the fertility of resource and ingenuity of the multitude of counsel had any other reason for postponing this matter, because evidently that is what all this means—it is the postponement of the trial of the issue that they have in mind. We were proceeding, some time ago, with a hearing which the three parties desired to have upon the question as to whether a temporary injunction should be issued in this case. It was interrupted to consider a suggestion that perhaps it would be quite as expeditious to have the issues determined by the pleadings and have the entire case heard, all at one time, as I understand it, and all who have addressed your Honor, with possibly the exception of Mr. Parker, assented. The attitude which they now take is quite different, though no one has spoken in behalf of the three gentlemen who were on trial, if I may call it that, except Mr. Nash for Mr. Fosberry. Mr. Morse merely made inquiries of the Court. He didn't advocate anything; he merely was a seeker of light and for information as to what was going to happen on Monday.

He didn't advocate anything because he merely said he didn't want his clients to come if it was for a futile purpose. I do not understand he moves a continuance, and the implication is that he is ready for trial. Now these gentlemen, who I understood were acquiescent if not enthusiastic for a hearing on the merits which was set for next Monday, no longer desire it—no longer desire that there shall be a hearing on the merits before the Court, and they think that the moderate procedure before a master would be more satisfactory to them, more conducive to the ends of justice, the result would be that we were interrupted in the proceeding of the injunction against them similar to that which had already been granted against the other defendants with the hope and expectation that we were to have a hearing on the merits. Having made that step, then they say they are not ready for a hearing on the merits and notify us they are going to try to get a hearing before the master where we shall not be able to get any injunction. In reply I would say I am perfectly content that the thing should stand over and not go to a hearing on the merits on Monday if they are not prepared and don't want to have it, provided we can go on with the hearing that was interrupted, as to which I understand no objection is made, unless Mr. Nash's remarks might be considered an objection in behalf of Mr. Fosberry. Ever since that date we have kept one or two of our witnesses from California—one witness from California and we have one ready to come on from New York—we kept that witness here at considerable expense every reason to believe that we could keep the assignment which your Honor made to have the hearing on the merits. We are ready for a hearing. We think it is important and to the interests of all parties especially to the Christian Science denomination that the hearing should be proceeded with. These parties who are accused should not hold back and not meet the issue as it is tendered to them. But if your Honor thought not, then if we can have our temporary injunction—or of course the hearing on the application for a temporary injunction—it would not necessarily have to go forward, but if they do not assent to the issuance of that injunction I do not see why we might not urge upon your Honor the continuation of that hearing. It is clear now that it cannot affect the clients of the gentlemen who have addressed your Honor at all. It will deal with these three gentlemen whose case is before your Honor.

Something has been said about a cross bill. That cross bill has been offered for the files without any attempt to get the Court to do anything with it. Of course no cross bill can actually be filed unless the Court orders it, under the rule—unless the

Court permits it. No application has been made to the Court for permission to file the cross bill. Whether they expected to have that cross bill tried next Monday in accordance with the assignment of the Court I cannot understand. They haven't tried to get it in a position where it could be heard. They haven't asked the Court to permit them to file it; haven't asked to have any answer made, which would sort of tend to make one suspect that they had never intended, seriously—never had seriously believed that we would go on with the hearing on the merits as your Honor had assigned it. Otherwise if they expected their cross bill to be heard at the same time that the bill was, wouldn't they have called your Honor's attention to the fact that they wanted to file a cross bill and asked permission? Seriously we think it important that the issue which was depended when we suspended the case ought to be heard and we will expedite it in the hearing in every way. I do not understand that the parties cannot be here; they are merely waiting to see whether the hearing will go on.

THE COURT: It has been suggested to me that the bill which was filed in this case is of very much larger import than I had reason to think it was, not having examined it carefully. My thought, as everybody knows, was that the bill was directed simply towards enjoining these three new defendants from taking any steps which would or could interfere with the administration of justice as it might be found to be administered in the other suit. It is now said that the bill is much greater in its scope than that and is in fact a very large bill and opens up every question which was supposed to have been decided by the master if his report should be sustained, and in as much as these three men who were not parties to that proceeding have a right to contest every issue which was therein supposed to be decided, the question has arisen—dropped, rather than argued—whether the bill looked at from the standpoint which I contemplated is demurrable—that such relief as is sought is not known to a court of chancery. That is, it will be argued from that, I should suppose that if the bill is demurrable that no kind of injunctive relief, temporary or otherwise, ought to be decreed by the Court.

I agree of course that upon a motion for a temporary injunction if a bill looks demurrable to me, with or without a hearing, I would not grant the injunction, and especially I should not grant an injunction until after I had heard the demurrer. Now then, if it happens in this case that the bill in its frame is so large as to make it demurrable it may prevent the relief which is sought, because it may be so included in the other as to be inseparable.

As regards the cross bill in the case

there should be no misunderstanding about that. I allowed it to be filed; application was made and I allowed it to be filed. Now then as to the hearing on the merits. Manifestly that cannot be determined of the whole bill and whether there shall be partial relief by way of injunction must be determined by itself, or may be determined by itself, provided the Court shall be of opinion that the bill is not demurrable, not demurrable in a way which affects the cross bill. It might be that the bill would be found to be bad in every respect except in one aspect of interfering with the trial before the Court. So I think it can be said that there should be no hearing on the merits on Monday and the matter to be presented to the Court are those things which go to the determination of the question as to whether or not it is a bill upon which relief can be put. If it shall turn out that the Court overrules the demurrer, then we can proceed to the question as to whether or not a temporary injunction should issue. It does not affect the merits in the controversy in which Mr. Parker is interested.

MR. DODGE: I do not want to mislead the Court as to the matter of demurrer. I do not feel at all confident that any defendant intends to demur to that bill or insist upon any demurrer which may be embodied in the answers which have been prepared.

THE COURT: To be frank, but not knowing anything about it, I have a suspicion that having the demurrer sustained is the last thing counsel would want.

MR. DODGE: The defendants whom I represent are a great majority of the defendants upon the original bill, are very anxious to have a hearing upon the merits. I should ask the opportunity of having them here on Monday if it is going to be necessary for them to testify. It is not delay we are after; it is the practical situation. I know your honor will not hear this case upon its merits on Monday.

THE COURT: That depends upon what you mean by "merits." If the bill—so far as the bill raises the question of real merits of course I cannot hear it under the circumstances. But there is such a thing as looking at the procedural merits, to wit: whether or not a temporary injunction should issue. That hasn't anything to do with the main questions which may be raised under this bill. As I say, counsel have thought and some have said that the frame of the bill permitted a re-examination of every question determined in the previous case and perhaps more. Now if the demurrer is not to be pressed, then I see no reason why we should not go on to determine whether or not the preliminary injunction should issue in the

matter which was interrupted when the case was postponed. It is for counsel to say. If I am to be in a position where I may throw out the whole bill, that is one thing.

MR. CHASE: I have a little different notion of the situation. I thought the Court at its own suggestion made reference to completing the pleadings and that upon that being done that there would be no preliminary hearing with reference to the temporary injunction, but that the matter would then proceed on the merits.

THE COURT: Let me interrupt you a bit. I thought when you asked me to have a commissioner appointed in the case the purpose of that request was to have the testimony in a way that it might be examined by the Full Court.

MR. CHASE: Yes.

THE COURT: Being assured that I hadn't any right to appoint a commissioner who would have power to report the facts to the Full Court except where the pleadings were completed, I thought that was the only way I could protect that which you desired to do. Now then to be frank about it, my mind did not go far enough into the case to think of anything else which might be raised upon completion of the pleadings upon the determination of the question whether a preliminary injunction should issue than these things involved in the preliminary injunction. I did not suppose in making that order to protect the rights of everybody that I was thereby closing the door to the determination of the question whether or not on a mere procedural question there should be a preliminary injunction. I had intended to put it into form where if I made erroneous rulings in the matter you could be protected.

MR. CHASE: I supposed it was so apparent that it was a lengthy hearing your Honor didn't want to go over it twice.

THE COURT: Let me say again, I assume, looking at the bill broadly, that there were such difficulties that no justice would attempt to hear the case upon the merits without the assistance of a master. It would take weeks, sitting here, to hear this case on the merits. I am now speaking of the general case. When would I get through?

MR. CHASE: I think it is the desire of our clients and our own desire, representing them, to have a full hearing on whatever the question may be—whether the merits or a preliminary injunction.

THE COURT: Then that is as much as saying you are to have a full hearing upon the merits before the Court shall issue any kind of an injunction. That may mean that the Court, whatever these defendants may see fit to do in the absence of a stipulation at all events, would not issue any in-

junction whatever the merits or demerits may be, for many months.

MR. CHASE: I didn't suppose there was any real present apprehension as to any future conduct with reference to our clients. It would seem to me it must have been fairly apparent from the hearing heard two weeks ago—

THE COURT: If I may make a suggestion. If nothing is to be done which counsel in the other case would reasonably object to, or contemplated to be done, why wouldn't the usual procedure of filing a stipulation be the proper thing to do?

MR. CHASE: It is not quite as apparent to us as to the Court what—

THE COURT: You say you do not want an injunction and even though you don't intend to do anything you won't file a stipulation for the reason that they are not going to be able to prove anything against your clients. But you have got to wait three months or more before you are going to find out whether they can prove anything against your clients or not and the matter of the preliminary injunction drops out of sight.

MR. CHASE: It seems to me it is fairly apparent that the hearing on the temporary injunction is apt to be pretty lengthy. If your Honor indicates you will proceed with it—

THE COURT: Often times what is called a preliminary or temporary injunction, as in this case, would involve the entire hearing of the question on the merits, and the decision of the injunction decides the whole case. Of course that is so.

MR. CHASE: That is our view of it. I am sure we shall not—

THE COURT: That means, of course, in this case, if that is so, that the three defendants in this case can do what they please as far as the order of the Court goes in the meantime.

MR. WHITE: There is another situation which perhaps has escaped your Honor's attention, involved in the fact that an injunction has already been issued in this case without notice against the two clients which I represent, also against Mr. Dodge's clients, Mr. Parker's also, and the purpose of the motion which we have filed which we intend to call up on Monday is to ask your Honor to dissolve that injunction because of the fact that it was not issued in accordance with the statute. That would leave us in the position—

THE COURT: According to the statute?

MR. WHITE: The Acts of 1913, c. 840. It says no preliminary injunction should issue without a hearing. Your Honor is familiar with the rest of it. I do not call to mind the exact wording now. But at any rate, if Your Honor should be of the view that at the time we were entitled to notice and the burden was then shifted upon Mr. Whipple to sustain his right to

a temporary injunction, our clients would then come in and be practically in the same position as Mr. Parker and the others.

THE COURT: You would be no better off. You would be in the same situation you are now. I think it is your turn, Mr. Whipple.

MR. WHIPPLE: I thought I had had my turn. I haven't very much to say. I tried to state our position. I do not feel that our bill is quite what had been described by the other counsel. I think the bill is what your Honor has thought and apparently still thinks it is. It is a bill to prevent interference by these people with the administration of justice—the proper administration of justice. It is ancillary in that sense. It makes the pleadings in the other case and the master's report exhibits, but it does not put those things in issue.

THE COURT: Do you say the only possible relief the Court can give is injunctive relief against interference with a full trial?

MR. WHIPPLE: I feel confident the Court can give injunctive relief and I have thought that probably in a case like this they could also give damages for the injury that has been done by the actions they have already performed, but as to that I am not so sure; I would rather not state at the moment without further reflection or examination of the authorities. But to say that it involves all the issues in the other case which has been settled by the master's report, is to state an untenable position.

THE COURT: I think it is at least safe to say that the respondents hope it does.

MR. WHIPPLE: Oh yes, but of course the administration of justice is not founded upon hope, because if it were it would come out very differently in lots of cases that I know of.

THE COURT: That is the reason I said I suspicion that some of them were not anxious to have the demurrers sustained.

MR. WHIPPLE: Of course it reflects the entire purpose of the whole business. It is the hope of these outsiders to get in in some way to get away from Judge Dodge's decision. They are afraid it will be confirmed by the Court, and they have from the time the Hulin petition was filed, all the way down around the fringes of the controversy—they have tried to get in even through the door of the State House, thrown wide open by the Attorney General.

THE COURT: All that can be said on the last thought, to you the comforting thought about it is, if the door is open you opened it.

MR. MORSE: And we are all in.
MR. WHIPPLE: And I still have the comfort of saying, if the door is shut they will stand knocking on it until eternity. We accept things as they are.

THE COURT: You say you accept the challenge.

MR. WHIPPLE: Yes, we accept the challenge, with the aid of the Court to deal in the matter. Of course the Court won't aid us out of any position we are in, but we are perfectly confident in regard to our position, and that your Honor's impression with regard to the bill, as your Honor stated it, is the right one.

THE COURT: I think there is an issue which would justify the Court, as I dimly remember the bill, in granting a preliminary injunction provided the evidence sustains it, even though it wouldn't be justified in any other ruling. In other words because the bill is drawn big enough wouldn't prevent giving the least possible relief which can be sustained by proof in the last moment this Court has occasion to consider the bill. I therefore think that when the matter come on for hearing on Monday all these preliminary matters may be taken up, and if counsel do not care to argue the question of the demurrer that clears the ground and the matters which have been suggested as proper to go to the master are matters which concern the substantial merits of the bill and have nothing whatsoever to do with the preliminary matter. If it should be determined in this case that I shall not issue a preliminary injunction as the regards these three men, it may well be the injunction which was issued without notice shall be dissolved. But if it should turn out that they ought to be enjoined then it is less open for further consideration. So that we will take up the matter on Monday, first to determine as to whether or not the Court ought to pass upon the question at all—whether it has the right to pass upon it, and having determined that question we will proceed and hear the remainder of this particular part of the case on Monday—the continuation of what we were hearing when the case was postponed.

MR. WHIPPLE: So we should be prepared with our witnesses.

MR. MORSE: Then I should have my parties. It is very inconvenient and a great expense.

THE COURT: I imagine it is. I don't know whether the demurrers are to be seriously argued or not. It could be determined right off now at a conference if anybody desires to raise a question on demurrer; or it could all be waived. That gets rid of all the difficulty as far as that goes. Then, of course, I will say now that as soon as the time can properly arrive I will send the case to a master.

MR. MORSE: It seems to me then, if your Honor please, it would be fair to wait until Monday's developments were determined before your Honor. I am somewhat afraid upon Monday—

THE COURT: Let me plead a little for myself. Next week is fortunately my last week. Justice DeCourcy come in the following week and he stays

during the month of June. Now then, it is scarcely fair for me to put these matters over so that it comes at the end of the week when my hands are tied for the month of June because I have begun hearings upon substantial questions. I shouldn't shrink from it if I undertook it, but I have other work that I have got to do. I have given two months to this work. I commenced to sit in this session the first of last July. Judge Loring went off the bench and I took his place and I haven't had a moment's leisure to attend to my own affairs since the first day of last June, so I am not hunting around for any chance of taking up any very extended hearings that do not belong to me; yet at the same time I feel I have heard enough of the matter so I ought not to shrink from doing that which it is proper to do.

MR. WHIPPLE: May I ask whether counsel think if we continue the hearing on Wednesday morning we could finish it before the end of the week. The thought in my mind is, if they are embarrassed about their clients coming here on Monday when your Honor has agreed to take up matters of law, etc.

THE COURT: There won't be any question of law. It may be you could determine that question to-day.

MR. WHIPPLE: There are a couple of motions for dissolutions of the injunction. I hadn't thought they would take a great while.

THE COURT: One really stands or falls by the other. You wouldn't expect me to dissolve the injunction if you had the notice that you ought to have had under the statute and it was likely an injunction would issue at the present time. You would be no worse off by having an unlawful injunction than having a lawful one.

MR. PARKER: I might say a word or two about that I will say it either now or Monday.

THE COURT: You better say what you have to say now, it may save some time.

MR. PARKER: When we were in chambers I stated to your Honor that the injunction had not disturbed Mr. McKenzie. Mr. McKenzie happens to be one of the oldest and best known workers in the Christian Science Church, one of Mrs. Eddy's personal friends and her original appointee under this Deed of Trust. The morning after he got the injunction it was featured on the first page of the Monitor, the place reserved for international news, and the word spread broadcast that he was enjoined. Christian Scientists throughout the field don't understand the difference between a temporary and permanent injunction. Now it happens your Honor that the injunction was issued without complying with the terms of the statute. I do not mean to tell your Honor—what I say I say with the

fullest respect to the Court and I would not say it with any other intent; if I happen to err I beg pardon in advance and ask your Honor to charge it to my inexperience. But it was an important thing for them to get that injunction; it was a big feather in their cap to get it and probably they didn't think it necessary to call the Court's attention to the statute. I called the matter to the Court's attention. I do not want my client to be under the stigma of that injunction another minute. I want to be in the position to have it dissolved. I assumed all it would be necessary to do was to call the court's attention to the error, to have it dissolved. An injunction, of course, is the greatest, the most valuable weapon which there is for enforcing respect for the law, for all of us members of the Bar desire to see it preserved in all its strength and not impaired in the slightest. We feel that if by any chance the slightest error should creep into the issuance of an injunction that all that is necessary to be done is to call the court's attention to it and have it dissolved, wherever it leaves us in the case.

THE COURT: Let me say, in exoneration of Mr. Whipple, as far as that may go,—he doesn't need any at my hands—but if there is any error in the issuing of the injunction without notice it is not Mr. Whipple's fault, it is mine, because I overlooked the present condition of the statute. No blame should go outside of the person who put his hands to it—that was myself.

MR. WHIPPLE: I am very much obliged for what your Honor has stated, but I want to make a statement about Mr. McKenzie and these depositions. The complaint against Mr. McKenzie is that after he had left the Publishing House, with a notice of a snap of your finger, leaving them entirely without any editors to conduct their magazine, he started then addressing the churches here in and about Boston, urging and persuading them to cancel their subscriptions to the publications on the ground that because he wasn't the editor they were not the authorized literature of the Christian Science Church. That is what he was doing, and his counsel to-day is taking depositions as he said of some 300 churches, as to the reasons why they ceased their subscriptions to the Christian Science literature. He hasn't offered to take one deposition of a person in the churches that his client addressed urging them to make cancellations. What his client said at these churches was communicated to other churches, namely, with regard to its being unauthorized literature, throughout the country and was the source of the greatest damage. He comes here and states to the Court that he is taking the deposition of several churches in

California as to why they cancelled their subscriptions, when if his client tells him the truth he must admit that in Cambridge and other places right around Boston he was urging the churches publicly to cancel their subscriptions for the purpose of doing injury to the Publishing Society. He didn't take their depositions at all. How can it help your Honor to have reasons given by the churches in California and Oregon and the churches throughout the United States and not in Massachusetts as to why they cancelled their subscriptions, whether they talked with Mr. McKenzie about it or whether anything he said influenced them.

MR. PARKER: Your Honor, I don't understand I can take depositions in Massachusetts. With regard to the church in Cambridge, where Mr. McKenzie is a member and where I happen to be chairman of the Board of Directors I propose to have the clerk here next Monday with the records, and every other church in Massachusetts has notified me that they will send their clerks with the records, and not one of them took any action as a result of any suggestion or communication, or influence of Mr. McKenzie or anybody else. Their action was the result of their own individual religious conviction that these Trustees were not carrying on this business in accordance with the principles of Christian Science.

MR. WHIPPLE: Wasn't Mr. McKenzie present to urge them?

MR. PARKER: He was not.

MR. MORSE: I wouldn't undertake to say just how long it would take to complete these hearings, whether it could be finished or not. I think it will be a very full and complete hearing. The only thing we desire—we don't want to mislead Mr. Whipple about its continuance until next Wednesday—but we do wish if possible to have matters so straightened out on Monday that when our clients come to Boston they will come for the purpose of going on with this hearing. I suppose Monday's working out, if I may use that expression, before your Honor on these various things—suggestions and arguments—ought to determine whether they ought to come on Wednesday.

MR. CHASE: In view of the announcement of counsel to the effect that they expect to ask the court to dissolve this other preliminary injunction, if the Court should take the view that it should be dissolved then the matter would be before the Court for hearing as to these defendants.

THE COURT: I believe the suggestion of counsel is that there isn't any injunction, so there wouldn't be anything to dissolve. However, that isn't so, I think. I think there is an injunction, just the same.

MR. CHASE: Then the question is whether the temporary injunction can

stand. Won't there be a hearing upon that question?

THE COURT: I don't think that the day will be quite long enough to take up a great variety of individual motions to dissolve the injunction. It would be surprising if the day were long enough for such a purpose. I think in spite of what has been said about the statute the court has a right to issue one. I think it is a little irregular, I agree, but we will see about that.

MR. CHASE: If we start on Monday will we proceed on Tuesday?

THE COURT: If we start the case I shall endeavor to continue it.

MR. PARKER: As I understand it, your Honor won't go on with the feature of the case involving the individual action of the employees of the churches, so there isn't any need—

THE COURT: I don't intend to take up at this time, except as I am compelled to, anything which involves what you think are the merits set out in the bill upon which a decree could be founded as against your clients.

MR. PARKER: The reason I ask is this, The employees, are, many of them, seeking new positions. It is a hardship to bring them here. I have ten or twelve who will come in case they might be needed, and the clerks of several churches likewise, all of whom I should be glad to release. If there is any chance of their not being wanted I will write them to-night that they need not be here.

THE COURT: If this case is stripped of all extraneous matter it is a comparatively simple question—whether or not a temporary injunction should issue. If I am to consider a thousand and one other things which are only remotely connected with the question I have in hand, although of vital importance in the end, the Lord knows when it will be finished. Otherwise I should have to try every question that by any possibility could

be brought in any form of proceeding. I cannot venture on that, of course.

MR. WHIPPLE: If in point of fact, as to which I have no opinion there is any informality in the granting of the ex parte injunction which has been granted, we shall immediately move, either this afternoon or on Monday, to have an injunction granted upon the bill as it stands.

THE COURT: Unless I am tremendously wrong the Court had power perforce of his inherent jurisdiction to grant the injunction, although it should not have been granted without notice, and it stands as an injunction until revoked.

MR. WHIPPLE: I think there is a restraining order which stands, without any question. I suppose the claim is made there should have been an order of notice fixing the time when they might come in and dissolve it. I assume that is their position, although I haven't looked into it very carefully. However, it may be if the conclusion were to be reached that for any reason there isn't any injunction, or it were to be dissolved, we shall come in and ask—

THE COURT: There has been a motion filed to dissolve the injunction, I think you may rest assured the Court will proceed upon the assumption that there is an outstanding injunction, and these counsel have the same rights as anybody else.

MR. WHIPPLE: I am speaking about whether Mr. Parker is to have his witnesses here. We shall ask for the injunction. If Mr. Parker is present I shouldn't think he would require any notice to show cause. If he wants to be ready to show cause he wants to have his witnesses to show it with.

MR. WHITE: I assume that applies to me.

MR. WHIPPLE: Yes. I would have all the showing qualities you have here, because I shall urge the Court to give us a speedy hearing upon our application. If such a thing transpires

as you think may, as a result of your application—it is a mere technical formal matter and I think the Court will be able to deal with it without any protracted hearing.

MR. CHASE: Would it be proper to ask if these applications were made and these defendants proceed as suggested, aren't they to be taken up first? Apparently, if they are, our clients wouldn't be needed.

MR. WHIPPLE: I shall not ask to have Judge Chase's hearing interrupted. I should want to go right on from the point where we suspended.

THE COURT: I think the only course, as I said before, is after we determine as to whether or not I can, within my judicial power, proceed any further with your case and so continue the case from where we left it—that will depend upon the question, and it will take sometime, as to the demurrers, and there may be other questions that may arise—but only such questions as are proper to be raised and addressed to the discretion of the Court as to the issuing of a preliminary injunction—will be heard. As I said before, if the bill is presented to me and it looks to be a bad bill on the face of it, I shall not issue an injunction.

MR. WHIPPLE: Your Honor will in effect consider whether, even in the absence of a formal demurrer, the bill is demurrable.

THE COURT: If the bill appears to me to be demurrable—the bill in this case or in any other case when presented to me for a preliminary injunction—I should refuse to issue it. It is only when the bill appears prima facie to be a good bill that I ever issue it. If I do such a thing, counsel may assume off hand that I thought it was a good bill.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

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Monday, May 24, 1920

BOSTON, Massachusetts—Further arguments in the case of Eustace et al v. Harney et al were heard, Monday, May 24, before Justice Pierce, as follows:

COMMONWEALTH OF
MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. IN EQUITY
EUSTACE et al v. HARNEY et als.
BEFORE MR. JUSTICE PIERCE
Boston, May 24, 1920.

Appearances:

Sherman L. Whipple, Esq..
Lothrop Withington, Esq..
Charles F. Choate, Jr. Esq..
Miles M. Dawson, Esq..
Frederick Nash, Esq..
Frederick L. Chase, Esq..
William A. Morse, Esq..
Robert G. Dodge, Esq..
John L. Bates, Esq..
William Frye White, Esq..
Torrance Parker, Esq..
Edwin A. Krauthoff, Esq.

MR. WHIPPLE: If your Honor please, on Saturday morning we, in behalf of the plaintiffs, filed an amendment to our bill. It does not, we think, affect at all the hearing which is set for this morning. I mean the hearing on the application for an injunction. It may affect preliminary questions which were to be presented to your honor by way of argument upon demurrers, if demurrers should be filed, and generally in the disposition of legal questions that might be raised. We sent copies to all counsel on Saturday morning of the amendment.

THE COURT: As I haven't seen it, would you mind reading it, or if counsel have read it perhaps the quicker way would be to have me read it. Perhaps you better read it.

MR. WHIPPLE: If your Honor would have the original bill right before you, then by reference your Honor would see where the amendments came in. The first amendment is by striking out at the end of paragraph 1 of the bill of complaint the following words:

"making the same a part hereof and hereby restate and adopt the averments contained in said bill in equity as statements and averments of this bill."

So that will leave that paragraph, or the second sub-division of the paragraph reading

"the plaintiffs annex hereto marked

Exhibit A a copy of said bill in equity" etc.

a copy of the bill being offered merely for information of the Court as to the pending litigation to which this bill refers.

The next amendment offered is an insertion at the end of the third subparagraph, paragraph 5 of the bill, the following words (it is on page 6 of the bill) just before the last subparagraph, the last sub-paragraph begins "the defendants aver upon information and belief" etc. Just before that we desire to add to the averments the following:

"and said defendants intend by said conspiracy and by acts done and performed in pursuance thereof to hinder, delay and defeat the administration of justice by this Court in said case of Eustace et al. v. Dickey, et als. No. 30,654, in equity, and so far as possible to nullify any benefit or advantage to these plaintiffs or to their trust that might come from a decision of this Court favorable to the plaintiffs in said case of Eustace, et al. v. Dickey, et al."

I think the purpose for which it is inserted is obvious.

The next amendment is an addition to the statement at the end of the eighth paragraph of the bill. That is the paragraph which states the effect upon the plaintiffs and the plaintiffs in the other suit by the conduct of the defendants. These are the words: "thereby in effect interfering with the proper administration of justice and nullifying the effect of a possible decision favorable to the plaintiffs in said suit of Eustace et al. v. Dickey et al. No. 30,654."

THE COURT: Won't you begin that again?

MR. WHIPPLE: "thereby in effect (it goes right on) interfering with the proper administration of justice and nullifying the effect of a decision favorable to the plaintiffs in said suit of Eustace et al. v. Dickey et al. No. 30,654."

It retains the statement of the actual injury to the Publishing Society similar to that which we allege in the original bill would be due to such action on the part of the Directors, adding the averment that it is an interference with the administration of justice and an attempt to nullify a favorable decision to the plaintiffs.

The fourth is striking out the fifth

prayer of the bill, making—which is the prayer for an account as to damages, leaving the prayers of the bill for injunctive relief. It was thought that this amendment would simplify the issues of the bill and make it clearly, if it were not before, and precisely what it was intended to be, a bill to prevent the interference by these defendants or any of them with the administration of justice, to prevent their doing themselves what it was forbidden the Directors to do, to prevent them doing things that they knew were forbidden by the order of the Court and thus compel respect for the order of this Court and compliance therewith.

THE COURT: I do not know who desires to speak first in reference to this matter.

MR. DODGE: If your Honor please, representing certain of the defendants I have only this to say, with regard to the motion which I presume is likely to be allowed at this stage of the case. We are not concerned at all about the last three paragraphs of the motion. We do not wish to assent to the allowance of the first suggested amendment. We have answered all the allegations of the original bill and we should welcome an opportunity to go to a trial upon these allegations and therefore we do not assent to the allowance of the motion, so far as the first amendment is concerned.

MR. CHASE: May it please the Court, in view of Mr. Whipple's expressions of perfect satisfaction in his bill as originally presented, by him made as late as Friday afternoon last, we were somewhat surprised to receive early Saturday morning this motion for an amendment. I think we want to enter a formal objection at least to the allowance of the amendment. We have filed a cross bill as your Honor is aware. If it is to be urged that our failure to object to this amendment should be taken as consent to it, or as any suggestion that the situation is altered with reference to the cross bill, we want it distinctly understood that such is not our position. Realizing, of course, the attitude of leniency of the Court toward any error in the pleadings of those who wish to correct their mistakes, I do not wish to be heard further, but I do want to have our objection a matter of record.

MR. WHITE: May it please the Court, I also wish to object to the allowance of the amendment upon the same grounds which have already been expressed. Mr. Whipple has stated that sub-paragraph 2 of paragraph 1 was simply inserted for the purpose of calling to the Court's attention the pleadings in *Eustace v. Dickey*. He read the first two lines of the allegation. The next two lines are somewhat important in that they are a restatement of the averment contained in said bill and thereby tender the same issues. In behalf of my clients I joined issue on those averments and we therefore wish to protest and say that we desire to be heard on those issues raised by that pleading.

MR. CHOATE: In behalf of Mr. Fosberry I desire to object to the allowance of the amendment on the grounds already stated.

THE COURT: I have this difficulty about the allowance of these amendments. My difficulty grows entirely out of the fact that I have allowed a cross bill to be filed. If it were for for this second part of paragraph 1 of the bill, which has been stricken out, I shouldn't have felt that I had any right to have allowed the cross bill to be filed. That matter was a matter which was considered at the time the application was made, and the matter caused me to hesitate a good deal about allowing the cross bill to be filed. My attention was called to this adaptation of the allegations in the *Eustace* bill and the Master's Report when counsel appeared before me. As a result, and upon consideration of what was then and there said in reference to this provision, I allowed the bill to be filed because I felt that it was open to the petitioners in the cross bill to raise questions which they desire to raise by the cross bill in view of the reiteration of the facts of the original bill and of the master's report. Realizing—at least I think I realized, whether counsel did or not—that the defendants, petitioners in the cross bill had no standing to raise any question whatsoever unless they had been made parties in the *Eustace* bill, because they were not parties in any sense whatsoever and couldn't be made parties.

As regards this other matter, as regards the other counsel in the case who are not situated as the others are, I should not hesitate long in allowing this amendment to be made, as it is customary to allow such things to be done. But in view of the cross bill, unless it should be withdrawn, I do not think I ought to allow the amendment to be made. I think they had a standing under it and unless the bill should be dismissed entirely that they cannot be deprived of that right, although whether they would be deprived of it

if the bill is dismissed I cannot say. I shall have to deny the motion.

MR. WHIPPLE: Will your Honor listen to this suggestion. The cross bill was filed without, or at least was permitted to be filed without any notice to the plaintiffs.

THE COURT: May I interrupt a bit. It is the general rule of chancery practice as I understand it, that a cross bill may be filed as of course. That is not the rule in this Commonwealth by reason of our statute that a cross bill cannot be filed without leave of Court, but having obtained that leave, I think I cannot deprive such party of such opportunity as he may have by allowing an amendment to the bill.

MR. WHIPPLE: May I say this, if we had received notice of the intention to apply for leave it would have raised this question and we would have then been able to offer the amendment which we not offer.

THE COURT: That may be possibly true.

MR. WHIPPLE: May I suggest further, that it would have been open to us, although we haven't done it, to move that the order permitting the entry of the cross bill should be revoked.

THE COURT: I don't think I should do that. As I said before, I did not allow the cross bill to be filed without some consideration and after presentations by counsel upon the matter which I thought was sound, and nobody knows any better than counsel do—than Mr. Whipple does at all events—that I thought the frame of this bill looked only towards the protection of the Court and I had never examined it in the light of it being possible under the bill to have raised any more substantial questions than that. But it is manifest I think, and the fact that counsel now desires to amend the bill shows that he thinks, the scope is larger than the purpose which I thought obtained in framing the bill.

MR. WHIPPLE: I will offer this further suggestion, if I may. Counsel who have objected, most of them, have filed demurrers. If the demurrers, or any of them, are sustained, that would certainly entitle the plaintiffs to amend their bill. These demurrers must be disposed of, and if there is merit in any of them the amendment would have to follow. If we haven't filed a bill which is not demurrable they have no right to file a cross bill, I take it. That is, if our bill was to be put out of court because of the demurrers the cross bill wouldn't have any standing. Judge Chase's clients have filed a demurrer, as I am informed. I didn't receive most of the answers until this morning, so I do not know what they contain, all of them.

THE COURT: I am not prepared to say as to whether that result follows or not. There is a contrariety of opinion about such things.

MR. CHASE: Our position is this: That by the amendment we cannot be

deprived of any advantage which was given us when we saw fit to do it. Our position is further, that even if this bill is demurrable, if it is demurred to and dismissed either upon the demurrer or upon a final hearing, the cross bill would go on and our rights be determined as of the time when we filed the cross bill. As your Honor said the other day, my brother has opened the door and he can only thank himself for the company which he entertains.

THE COURT: I have endeavored to carefully guard what I have said as to what would be the result of the case in that respect, as I understand that there is a difference in the opinion of Courts as to what is the result of such a bill—what is a result of the dismissal of the bill. I am trying not to express any view on it at all.

MR. CHASE: I am merely stating our position as it would be if the question were raised. I will say at this time that we are waiving and do now waive any demurrer contained in our answer, so that there is no demurrer on the part of our clients.

MR. WHIPPLE: I desire, if your Honor please, to suggest that we had a right to be heard upon the question as to whether there should be an allowance of the motion to file a cross bill. We shouldn't have cared anything about it except that apparently in your Honor's view rights were affected thereby. In other words it was more than a mere pro forma matter, because upon what has already been stated we could have permitted the supplemental bill to be dismissed if we had seen fit so to do.

At all events we should have had opportunity to offer an amendment. As to the suggestion of counsel that if we opened the door we must entertain whoever comes in—we say that while these gentlemen are not particularly welcome guests, we think we will be able to entertain them warmly. We have been able to take care of them, or of people similar to them. What we desire is not to be annoyed by the bother of them, but if we have to take them in hand I think justice will be applied to them.

But we should like to press that matter. It is different from granting injunctive relief. The situation is quite different here. They knew who the counsel were. Of course, while ordinarily it is purely a perfunctory matter, it turns out in this case it wasn't merely as affecting the question of whether we are going to have a somewhat annoying extension of litigation which ought not to be extended, with regard to issues which have already been determined and with regard to which these gentlemen have nothing to do.

MR. KRAUTHOFF: If your Honor please, I would like to ask for information with respect to the filing of this cross bill, whether the Court has passed upon the right of the defendants to file this cross bill in such

a way that it is not open to other members of The Mother Church to be heard upon that proposition. Our understanding of the situation is this: That the relation of the Trustees of the Publishing Society to the Mother Church is such that any bill to remove the Trustees for malfeasance in office can only be maintained by the Directors of The Mother Church. For that reason we were careful in the Krauthoff bill, filed on March 31, 1920, not to ask relief with respect to the removal of the Trustees. The Directors on the 12th of April filed a bill which asks for relief in other respects that the Trustees be removed as such. Our concept of the situation is that under the provisions in the Church Manual, it provides that the business of The Mother Church should be transacted by the Christian Science Board of Directors. The right to remove the Trustees is a right that can be exercised on behalf of The Mother Church only in a suit brought by its Board of Directors, and that a member of The Mother Church has no right directly to appeal to this Court to have the trustees removed except upon showing that he has requested the Directors of the Mother Church to take steps and that the Directors of The Mother Church have failed and refused to do so. The Directors have not failed to take that step. They have asked on the 12th of April that these trustees be removed. If this cross bill is to be sustained as an independent right on behalf of the members of The Mother Church who join in an effort to remove these Trustees, of course it can only be sustained on the theory that these members bring that cross bill on behalf of themselves and all other members of The Mother Church who desire to participate in that cross bill. Because it would be intolerable that this Court would undertake piecemeal to hear members of the Mother Church on the theory that these Trustees should be removed and of course it would be intolerable that the Trustees in the conduct of their business should be subject to the varying views of members of The Mother Church. Many of us have different views and different ideas to the things they shall do, and Mrs. Eddy provided that the Directors should control the situation. At the proper time, if this is the proper time, I desire to be heard on behalf of the plaintiffs in the suit brought on the 31st of March, that Messrs. Bangs and Hemingway have no right as members of The Mother Church to file a cross bill to remove the Trustees at all except upon the theory that the Directors have failed to do it, and the Directors have done it. If the doors are to be opened to members of The Mother Church to ask this Court to remove the Trustees there should be an order made requiring everybody to come in and bring all their clients in at one time and place. Mrs. Hulin asked that they be removed and her petition was de-

nied and an appeal taken from it; the Attorney General asked that they be removed from office and that petition was denied. The Directors on the 12th of April asked that they be removed and that bill is pending. Now Messrs. Bangs and Hemingway ask it and that bill is pending. We know of many reasons that are not set up in any of these proceedings that show why they should be removed. Of course if the Court is engaged in the practice of removing these Trustees except at suit of the Attorney General, representing a public charity, or at the instance of the Directors as representing the Mother Church which we claim means the Church in its aggregate capacity, not in the sense that any other members of the Mother Church do, but the Church in its aggregate capacity, whose business is to be transacted by the Christian Science Board of Directors,

Now if the door is open to the directors and the Attorney-General shall have the right to ask that these trustees be removed, we feel that this court, in order to avoid a multiplicity of litigation, should make an order fixing a time within which everybody who claims that these trustees shall be removed shall appear and set up all the reasons, so that the court may have them all before it and dispose of the whole controversy. If it is proper to do it now we would like to present to the court the theory that the prosecution of this crossbill should be enjoined, because, first, it is a direct interference with the suit of Krauthoff v. Attorney-General, and, in the second place, it is an exercise on the part of members of The Mother Church of a claimed right which does not exist in them, which they are exercising to the disadvantage of other members of The Mother Church, who are upholding the authority of the Board of Directors to transact the business of The Mother Church and not seeking to transact it for them.

But of course, if your Honor please, everybody connected with these cases seems to disregard the fact that Krauthoff v. Attorney-General is pending, both in respect to their private conferences and in respect to matters that they take up with this court in Chambers. But we have assumed that the suit is pending on this docket, that until it is finally determined it is entitled to all the incidents of a suit which is pending, and that incident is that that suit has brought before this court in one suit all these controversies, and that that action cannot be telescoped into other suits to be tried out piecemeal or in part. But in order to end the litigation, in order that there might be not a multiplicity of lawsuits, in order that we might not breed more trouble as we go on instead of ending it, the whole subject should be concentrated within one case and there disposed of.

And so I would like now, if it is

proper—I haven't the pleading here with me—I suppose I ought to file a formal application, to present to the court the theory that this crossbill has no place in this court, and that it should not be permitted to be filed, except, if it is to be filed at all, upon condition that all members of The Mother Church may join in it, and that a time be fixed within which they shall join or be precluded from thereafter joining, in order that the court may have the whole controversy before it. To begin to decide at the instance of Messrs. Bangs and Hemingway that these trustees shall be removed, and then next week to decide at the instance of the directors, and the next week to do it at the instance of the Attorney-General, and then the week after at the instance of some other member of The Mother Church, would mean that the funds of this estate would be spent in litigation and not in the promotion and extension of the religion for which the trust was founded. Your Honor said you had considered the filing of the crossbill, and I have spoken thus in order to have it clear whether you had precluded any expression of opinion as to the legal status of this crossbill. I think it is a glaring disregard of the authority of the Board of Directors, and something that the Board of Directors in the exercise of their authority to transact the business of The Mother Church should be quick to resent and to stop. Of course I am not their counsel and can only draw inferences from their action, and not tell them what to do.

Mr. WHIPPLE. May it please your Honor, may I direct attention—

The COURT. Let me make clear, certainly clear to Mr. Krauthoff, what the position is about it.

Mr. WHIPPLE. Very well, your Honor.

The COURT. I may say, as a preliminary statement, that I think there is a lot of good sense in what you have to say, that the matter which came before me—and I desire to repeat it—was an application to file a crossbill. To repeat again, it is generally, perhaps in a large majority of the courts, held to be a right of any person who is named as defendant in a bill in equity to file a crossbill. In this Commonwealth, by force of the rules of the court, a crossbill may not be filed without leave of the court. That has nothing to do with the question as to whether or not the crossbill is demurrable or can be maintained. It is simply a leave given to the parties to make an attempt to interject themselves into the action in the way of getting something in the way of relief beyond that which they could have if they filed an answer. Now that is all I have attempted to do in this case; and whether or not the bill will lie as a crossbill is a matter to be determined as by counsel who are in the case, who have the right to appear in opposition to it, as they may be advised.

Mr. KRAUTHOFF. We appreciate your Honor's courtesy in stating your position. So we have pending in this suit of Eustace v. Harney, and we have pending in the main suit of Krauthoff v. Attorney-General, a petition to enjoin the prosecution of Eustace v. Harney, that is, the prosecution of this injunction application; and we would broaden that so as to include the prosecution—

The COURT. This thing is of course—I say “of course”—this is quite certain: That outside the broad terms of this particular bill, these particular defendants, Hemingway and the others, would have had no standing whatsoever to interject themselves into any considerations relating to the findings of the Master, or of the matters which are directly involved in the Eustace bill. But, having been brought into this bill under the allegations that that bill, at least, the facts of the Eustace bill are an essential part of this bill, it gave at least a color of right to them to seek to have some kind of relief beyond that which would result from a mere denial of the position in the Eustace bill, or of the denial of the position which is set forth in this bill, that they were attempting to interfere with the conduct of the litigation.

Mr. KRAUTHOFF. As we understand the report of the Master, there was left open in the Eustace case unimpaired the general power of the court of equity to remove the trustees as distinguished from the exercise by the directors of the power to remove under the deed of trust under which the trustees are acting.

The COURT. Yes, possibly so, but I did not suppose it was.

Mr. KRAUTHOFF. Oh, I think it is clear; because in the Eustace case the directors removed Mr. Rowlands under a power, and if that power does not exist, or if the power was not exercised, why, the right of the court of equity to remove is still unimpaired. Now, in addition to that, it would be unimpaired by reason of the facts which happened after March 17, 1919. But the thing that we are interested in is at whose instance the removal can be effected in a court of equity: By the Attorney-General, on the theory that it is purely a public charity, or at the instance of the directors, on the theory that the Church is a direct beneficiary, or have the members of The Mother Church a direct interest as beneficiaries in the Publishing Society in such a way that any one of them can ask for removal? On that latter part, as members of The Mother Church, we say to the court that we as members of The Mother Church, have no direct right to have these trustees removed; our right to have these trustees of the Publishing Society removed is predicated on our right to have the directors act, and can only be exercised by pleadings and proof that the directors have been re-

quested to act and have failed to act, and in that particular the directors have not failed to act. They have filed on April 12 their bill to remove these trustees, and the removal of the trustees should take place on the directors' bill, if it takes place at all, and not at the instance of members of The Mother Church. Now, if we are wrong about that—

The COURT. Oh, I do not say you are wrong about it, Mr. Krauthoff, at all, but of course I have heard all this many times before.

Mr. KRAUTHOFF. Yes, I understand.

The COURT. I am on familiar ground.

Mr. KRAUTHOFF. I am not saying you said we were wrong. I said if we should be held to be wrong, and it is open to members of The Mother Church to ask that these trustees be removed, that the bill would be open to all members of The Mother Church to participate, and all of us would like to join.

The COURT. Now, Mr. Whipple.

Mr. WHIPPLE. Your Honor has anticipated a large part of what I was about to say, but this situation is presented. The crossbill attempts to accomplish a thing which has been denied on two or three different occasions by this court; that is, practically to intervene to get some relief against the trustees. We say that it is perfectly clear that it is demurrable for that reason, because the court has already decided against what is in the crossbill. Now when anyone is summoned into court they may have permission from the court to file a crossbill, but that does not mean that they can file any sort of a crossbill; that means that they have got to file a crossbill which will stand in law.

The COURT. Ultimately, it means.

Mr. WHIPPLE. Ultimately, yes. Well, that is just what I mean here. Therefore, if we had had opportunity to discuss the matter when application was made to file the crossbill we could have presented the claim that the crossbill was demurrable, and your Honor would then have heard it.

The COURT. Did you ever know of a case where the court on application to file a crossbill has sent for the other side and asked them if they thought the crossbill was demurrable?

Mr. WHIPPLE. I don't know that I have knowledge of a case, because my knowledge of the—

The COURT. I don't think that ever happened, I don't think it ever will—I don't know.

Mr. WHIPPLE.—equity practise is limited. But however that may be, it would seem that while it is probably within the discretion of the court, it may be that in this case we could have raised these particular questions which we now seek to raise, although I quite agree with your Honor that they are still open to us on demurrer.

The COURT. The court has decided

nothing except that the petitioners in this case may file a paper, never having had an opportunity to discuss the question in any way whatsoever, in which they desire to present to the court the question, if the other side shall object to its doing it, as to whether they may raise questions which somebody else, the court has said, has not the right to do; and so often as a new bill and new parties come in I do not see why the court has not got to afford to them that right.

Mr. WHIPPLE. Of course the rule, by requiring the consent of the court, impliedly requires that the court should give it, or may give it at least, more than a mere perfunctory consideration, and I understand your Honor did at that time.

The COURT. I think counsel will agree that there were some pertinent, or impertinent, questions.

Mr. WHIPPLE. But at any rate we are dealing with a practical question, and I offer the suggestion as to whether or not the matter of the allowance of the amendment should not be tied up with the question as to whether this bill is demurrable and ought not to be dismissed for that reason, or whether we may not move for its dismissal and raise all these questions upon a hearing before your Honor on a question to revoke the permission to file it, on the ground which we now present of its being demurrable. I mean, those questions should be tied up together, and either the action of the court on the question of the dismissal of the bill should be suspended, or certainly without prejudice.

THE COURT. Let me say this again, Mr. Whipple: If the bill had not contained the averment which it does contain, and which are proposed to be stricken out, I should not have allowed the crossbill to have been filed, for reasons which I need not amplify and which are sufficient of themselves. Now, if I shall allow the amendment its effect will be, or may be, to leave a crossbill on file which, as I have said before, I would not allow to be on file if the question were presented anew with the amended complaint. It does not seem to me to be a fair position for me to take. Now, then, if counsel desire to demur to the crossbill, and thereafter to strike out by amendment or otherwise, I will consider that matter, bearing in mind the objection of course of counsel who oppose it on other grounds. Of course, undoubtedly, the crossbill having been filed, the petitioners in the crossbill, or plaintiffs in the crossbill, would not stand any worse by such action than they would if the action had been discontinued entirely, so they would not be prejudiced in that respect. Now, so far as the present motion goes, then, it is denied, unless counsel desire to have it stand continued to await further action with relation to the crossbill.

MR. WHIPPLE. That was the suggestion that I intended to make, your Honor, when I was on my feet last—that it should be suspended to be tied up with action on the crossbill.

THE COURT. Well, even though I did not sustain the demurrer to the crossbill I might still allow or disallow the amendment thereafter, and you might desire to withdraw the motion for striking out, following the result of a hearing upon a demurrer or other action to the crossbill. So I will leave the matter entirely in abeyance.

Mr. WHIPPLE. Well, that is conceivably so, but I understood the bill as your Honor understood it, as you stated it originally, and I did not intend to have anything in the bill, of course, nor with entire deference do I think there is as it stands anything in the bill, that goes beyond making it merely ancillary to the other bill, and an attempt to prevent other people from interfering with the administration of justice in that bill. I speak with deference, and probably I am wrong; probably there is something that raises the issues of the first bill, although I cannot conceive how it can be that merely referring—

The COURT. Well, you need not argue it, Mr. Whipple. Of course it goes without saying that I so understood, that that was the intended purpose of the bill when it was first presented to me. That it is larger is not my fault, or yours perhaps, but it is probably larger.

Mr. WHIPPLE. Well, if I may be permitted just a word, lest I may be estopped later, how can these two gentlemen be concerned in any way in the determination as to whether the directors have the right to remove the trustees or not? Perhaps I am precipitating a new field of controversy.

The COURT. Well, you are precipitating the argument, I suppose, as to the right to file a crossbill, because if they have no interest at all they have no right to file a crossbill.

Mr. WHIPPLE. So it seemed to us that the averment as it stood was a proper averment, by incorporating the allegations of that first bill so far as they were material into these second bills, merely for the purpose of having before the court the averments in that bill. Of course it simplifies it by simply referring to them as an exhibit, rather than restating those averments, which do not raise any issues between those plaintiffs and these, as we have thought. As Mr. Withington points out, we do not ask in this suit, as a part of our relief, that Mr. Rowlands be declared to be a trustee, which is the main part of the relief which we seek in the other bill.

The COURT. This matter will be withheld for further consideration.

Mr. PARKER. May I take the court's time for a minute to present an amendment intended to correct a

purely clerical error in my answer? In the eighth paragraph of the Bill of Complaint, Mr. Whipple sums up his various grievances and makes his prayers for relief. As I had answered all those allegations in other parts of the bill, I undertook to simplify my answer to that paragraph by simply saying that my client saw no reason for further answer to those allegations. By some mistake the word "further" was left out, and it reads that he sees no reason to answer those allegations.

The COURT. There is no objection to that correction being made, and it may be made and filed. Now I understand that there are demurrers to the bill.

Mr. DODGE. The demurrer which is embodied in our answer is waived, and that same statement applies, I think, to all the other demurrers except that filed in behalf of Mr. Fosberry.

The COURT. Are counsel here representing Mr. Fosberry?

Mr. CHOATE. Yes, sir.

The COURT. Do you desire to argue the demurrer?

Mr. CHOATE. Yes, your Honor.

The COURT. If you will let me see it.

(The document is examined by the court.)

Mr. CHOATE. May it please your Honor, the demurrer is drawn to the bill as it was entitled "Amended and Supplemental Bill," not including the amendment or the motion to amend the bill which was offered this morning and which has been denied. If that motion, under the present change of position of Mr. Whipple, should subsequently be offered and allowed, the objections offered by the demurrer would apply with considerably increased force; and if it is allowed, and this demurrer is overruled, we should ask leave to demur again to the bill as amended by the allowance of such motion. It is always difficult to follow Mr. Whipple in the shiftings of positions which he takes, but it is doubly hard in this case because they are so sudden. It was only Friday that he challenged the parties on the opposite side to a trial of the issues of the facts which are raised by Eustace v. Dickey, and now it is quite obvious that he has a change of heart and wants to avoid them, and that is the reason for the amendment of his bill. But even as the bill stands, unamended, we submit that it presents an anomaly for which there is no precedent. I shall go no further than to state as propositions the points that we rely upon, because I appreciate that there are so many here waiting to present evidence, and the court has so much to do, that I should not be justified in arguing at any unnecessary length. But as to Mr. Fosberry, the original bill which was filed against Harney and others, supplemented by the amended and supplemental bill, which brings in Mr. Fosberry's name, comes to this. It al-

leges that a suit has been brought by Eustace against Dickey, and refers to the pleadings and to the injunction in that case. It then charges at the top of page 3 of the Amended and Supplemental Bill:

"The plaintiffs are informed and believe and accordingly aver that Arthur F. Fosberry is a resident of San Francisco, in the State of California, and is temporarily sojourning in Boston."

Then on page 4 of the Amended and Supplemental Bill is the next reference to Fosberry:

"The plaintiffs are informed and believe and accordingly aver that said Fosberry has also been active with the defendants and others in said plan and conspiracy, more particularly in sending out false and misleading reports, statements and information, as alleged in sub-paragraph C of Paragraph 6 of the original bill, and in the dissemination of the printed requests containing false and scandalous statements with regard to said trustees to be signed by members of The Mother Church, as set forth in sub-paragraph D of said Paragraph 6 of the original bill."

Without unnecessarily enlarging upon those allegations, [c] in the original bill is as follows:

"[c] They have sent out false and misleading reports, statements and information with regard to the administration of the trust by the Trustees, unjustly and unfairly criticizing the conduct and management of their trust by the plaintiffs; and among other things have wrongfully and falsely charged the plaintiffs with having withheld from the Treasurer of the Mother Church large sums of money due from the Trustees to said Treasurer, and that in connection therewith the plaintiffs had made false entries in their own books."

A libel, I suppose, if it is anything.

"[d] In connection with the dissemination of false and misleading statements, and with a view to embarrass, annoy, and vilify the plaintiffs, said defendants have caused to be circulated among Christian Scientists throughout the United States printed requests which they have urged members of the Mother Church to sign, which requests are addressed to the plaintiffs as Trustees, and contain false and scandalous statements with regard to the Trustees, to wit, that they do not obey the Manual of the Mother Church, and do not fulfil the demands of the Deed of Trust, that they are not loyal and faithful and consistent believers and advocates of the principles of Christian Science. . . ." while in fact and in truth the plaintiffs had and always have obeyed the Manual of The Mother Church, and have performed their duties, and so forth.

Now, the theory upon which Mr. Whipple originally started was that he could merely make reference to his original bill in Eustace v. Dickey,

and without giving these defendants any chance to question the right on which the plaintiffs stood in that case, and without making them parties to that suit, and without giving them any right to defend on the main issues that were involved in that case, he could by this, as he calls it, ancillary proceeding, obtain an injunction against them. In other words, his theory was that he could obtain an injunction, not in support or protection of any property right, but on the theory that these defendants were in some way interfering with the administration of justice.

That proposition is, we submit, an anomaly and without precedent, and unsound. The aid of the court can be, of course, extended to the protection of a right; of course it is never extended to the prevention of the publication of a libel, and it never has been extended, we submit, to any efforts in the way of preservation—

The COURT. What is it you say about a libel?

Mr. CHOATE. I say it was not extended to the prevention of a publication of a libel.

The COURT. In what sense?

Mr. CHOATE. Well, I ask your Honor's attention to a case in 219 Mass.—

The COURT. Oh, I am aware of that case, but there are other decisions. Go ahead.

Mr. CHOATE. I have found no other decision by our Massachusetts courts which so summarily establishes the proposition as that, and I should assume as a general principle that that was true.

The COURT. Not true in England.

Mr. CHOATE. I beg your pardon.

The COURT. It is not true in England today.

Mr. CHOATE. Well, we are sitting in Massachusetts.

The COURT. Not always; I say it may not always be true here. That is the general rule.

Mr. CHOATE. There are, of course, exceptions to that rule, but speaking as a general proposition if the bill alleges nothing except the publication of a libel then I submit that the bill is unsound. And the bill does not allege further than that.

Now, it seems to me that the plaintiff must take either one of two grounds. He must either ask the court to punish these defendants for contempt, as being agents or representatives or knowingly acting at the behest of the Directors who are already subject to the injunction; or he must make them parties to that bill and bring them within the terms of the injunction. Or possibly a third course: he might bring his independent suit, standing upon the rights of the Trustees as they are set up in *Eustace v. Dickey*, and seek the same redress against them, in a measure, which he has sought against the Directors. Of course the redress sought against the Directors was to prevent a removal of one of the

members of the Board of Trustees; but incidentally it asked to be protected against interference with the property right, the trust fund which the Trustees were administering. And he might as a third alternative rely upon the fact that these plaintiffs are administering a trust and have valuable property in their hands which he might charge these particular defendants, Mr. Fosberry and others, were doing irreparable injury to.

But he has not taken any one of those courses, and we submit there is no other, there is no other fourth course, those three are the only courses that are available to him. His course goes in between and seeks to have these defendants enjoined without making them parties and without charging that they are agents or tools or instruments of the Directors in such a way that they would be directly liable for contempt of the court's order which has already been issued.

Now, with reference to his allegations on that score let me ask your Honor to observe what he says.

The COURT. What are you reading now?

Mr. CHOATE. This is the allegation of paragraph 7:

"7. The plaintiffs are informed and believe and accordingly aver that . . . they are acting by the authority and with the approval of the Christian Science Board of Directors . . ."

It does not say that is a fact, it says they assert it; the two are not equivalent.

"Whether said assertion be true in fact, these plaintiffs having no complete information are unable to state further than to aver that at no time have the said Directors, or any of their agents or servants, in any way known to these plaintiffs, expressed their disapproval of acts openly declared to be done in their behalf and with their approval, and have so far as known to the plaintiffs made no request of the defendants, or any of them, or of their associates, that they should refrain from further acts of the kind and character hereinbefore described.

"If said acts are performed at the instigation of said Directors or with their approval, then the defendants are all of them consciously violating an injunction of this Court for and in behalf of those who do not dare themselves to perform the forbidden acts but inspire others so to do."

That is a confession of his weakness. He does not either light or fly; he does not make any averment of facts on which he can stand; he admits ignorance of the facts that are necessary to give him a standing.

Now, in a word what are the things that are charged against Mr. Fosberry? There is nothing in the allegation of the conspiracy in and of itself which advances the plaintiff; until we come to specific acts there is nothing upon which he can rely.

Now, the only definite charges are: "circulating printed requests to the

Trustees that they resign, on the ground that they do not obey the Manual of The Mother Church and do not fulfil the demands of the Deed of Trust and that they are not loyal, faithful and consistent believers and advocates of the principles of Christian Science."

Now, there he is charging, not anything which relates to the fund or the property which is in the hands of these plaintiffs, but things with reference to their own personal situation.

Remembering your Honor's question with reference to the breadth of the proposition as to the publication of a libel, I do not deny the qualification in the case which I have referred to, of the possibility of such a bill being maintained where charges relate to breach of trust and things of kindred nature. But the thing that is charged here is that the defendant Fosberry has been "circulating requests that the plaintiffs resign"; and the Court's interference is asked that he be enjoined from circulating requests that the plaintiffs resign, in any form, whether in the form in which they have been, it is alleged, circulated, or not. In other words, the Court is asked to enjoin Mr. Fosberry—and if the principle applies to him it applies to all the other thousands of members of the Christian Science Church who may not believe in the rectitude of the conduct of the plaintiffs—from asking them to resign, on the theory that such a request to resign is an interference with the administration of justice. That, we submit, is a proposition which has not any standing and cannot have any standing in a court of equity.

If the amendment which has been offered this morning is subsequently allowed, of course it raises with much additional force the course which I suggested to your Honor. Because there, if that amendment is allowed, the allegations with reference to the *Eustace v. Dickey* bill, which now seem to be in a somewhat anomalous state, are withdrawn, and there is nothing left on which the plaintiffs are given a chance to try out the question of the plaintiffs' right on which they stand. That is, either the defendant is entitled under the bill as it stands to try out the standing of the plaintiffs and their powers under the deed of trust, and the effect of the action of the Directors upon them, or he is not. He cannot be prevented, if it is in the bill, from trying those questions out from any decision which has been rendered by the Master in *Eustace v. Dickey* thus far, nor from any judgment that might follow on that, because he was not a party to that suit.

The COURT. Assuming that that may be true as to [d], as you are now address your remarks to [d], and that is the only one on which there is any possible thought of libel, I think, what

do you say as to [a], [b], and [c]?

Mr. CHOATE. Fosberry is not charged with doing anything under [a] and [b], he is only charged with doing things under [c] and [d].

Now, as to [c] a person cannot be, I submit, enjoined from criticizing, whether his criticisms are fair or not, a person who is in the administration of a public charity. It may be that his criticisms are most unjust and most unfair, but a court of equity will not interfere to prevent criticism of a man who is administering a public trust. That is a right which anybody has today. In fact, it is a liberty which the courts, even if it is abused, I should submit ought not, from questions of public policy, to interfere with. It is better to have the widest criticism, even if much of it or some of it is unfair, than to take the position that a person who administers a public trust cannot be criticized.

Now, that is the gist of [c]:

"[c] They have sent out false and misleading reports, statements and information with regard to the administration of the trust by the Trustees, unjustly and unfairly criticizing the conduct and management of their trust by the plaintiffs;" and then they supply some of the details.

Now, unless the Court says that it is a sound principle of law that it will enjoin criticism, just or unjust, of an administration of a public charity, I submit that the plaintiff has not any standing against this defendant Fosberry.

Mr. WHIPPLE. If your Honor please, let me first point out that Mr. Choate is not quite accurate in stating that we do not aver that Mr. Fosberry has not done or participated in the doing of the things under the headings [a], [b], and [c] on page 7. We have pointed out that he has done the other things more particularly.

Mr. CHOATE. Under [a] and [b].

Mr. WHIPPLE. Under [a] and [b]. The statement is that the other things are those which he has more particularly done, but he is charged—

The COURT. That is to say, that comes in the general averment:

"The plaintiffs are informed and believe and accordingly aver, that the defendants, . . ."

Mr. WHIPPLE. Yes.

The COURT. Which you say includes Fosberry as well as anybody else. Is that right?

Mr. WHIPPLE. Yes.

Mr. CHOATE. It is on page 4 of the amended and supplemental bill.

The COURT. I am speaking of the original bill.

Mr. CHOATE. Fosberry is not in the original bill, sir.

The COURT. That is right.

Mr. CHOATE. Fosberry only appears in paragraph 7 of the amended and supplemental bill. Look at paragraph 7, and it has all the charges against him.

The COURT. Yes, why isn't that so, Mr. Whipple?

Mr. WHIPPLE. [Reading paragraph 7 of the amended and supplemental bill]:

"The plaintiffs are informed and believe and accordingly aver that said Fosberry has also been active with the defendants and others in said plan and conspiracy, more particularly in sending out false and misleading reports, statements and information, as alleged in sub-paragraph C of Paragraph 6 of the original bill, and in the dissemination of the printed requests" and so forth.

It says that he has more particularly done those things, but it does not affect the averments as to his having done all of those. We are dealing here merely with the specifications, if your Honor please, and not with the general allegations.

Mr. Choate has stated very clearly the issue that is presented here—I trust not inadvertently. I think he appreciates it, and understands it as I do. The question presented is as to whether when this Court has granted an injunction against certain defendants in a suit pending before it, it can in any way enforce obedience to that injunction without making the people who violate the injunction intentionally,—neither parties to the suit nor their agents or servants, but who accomplish the result of the defeat of justice or interference therewith,—whether this Court is entirely powerless after it has granted its injunctive relief as against the defendants, to prevent other people in sympathy with the defendants, or not in sympathy, accomplishing the very result which the Court has forbidden to be accomplished.

We have intended this bill to be a bill to raise that question; that is, to bring the people mentioned, who are not defendants in the original suit, into obedience to the orders of this Court of which they know and which they are intentionally, and, as we say, flagrantly violating, although they are not parties, and may not be—we make no allegation as to that—may not be the servants or agents of the people who are defendants and who are enjoined. And the question is: Can we do that?

If we cannot do it, if there is no power on the part of this Court or other Courts to accomplish that result, to bring the people who are not parties to the suit into obedience to the Court's decree, why, then the bill cannot be maintained, and we do not care to maintain it if this Court is thus powerless. The question is, then: Can this Court prevent the things being done which it has ordered should not be done—ordered the Directors not to do, without making all the people who are threatening and intending, as we say, to do those things which are forbidden, parties to the bill?

We want to present that issue very

squarely. Your Honor has said heretofore that the authorities on that question were scarce.

The COURT. Conspicuous by their absence.

Mr. WHIPPLE. But there is some authority on the question. It would be an astonishing situation if the Court's decrees could be set at naught in that way by someone who steps in, knowing and boasting, as we allege these defendants have done, that they knew that the Directors could not do these things, but that inasmuch as the injunction was not directed against them, the Directors could not do it but they themselves could do it, and that therefore they were going to do it. In other words that they were going to do things which were forbidden by the decree of this Court, and accomplish a result which this Court had indicated it did not want accomplished, and thus interfere with the administration of justice by this Court in a case that was before it, and nullify the practical benefits of a decision that this Court might render.

It is a pretty important question and a pretty fundamental question, in determining what the power is of the Court to enforce its decrees.

Just such a question did come up before a circuit judge of the United States in the District of South Carolina, in *Chisolm v. Caines*, which is reported in the *Federal Reporter* 121, p. 397. And while that is a decision, I think, of a single justice, a single judge, a circuit judge, it cites authorities which are important and which have a bearing.

There the Court had issued an injunction against shooting and trespassing on certain property which the defendants had claimed a right to shoot over, and not to trespass, but to go upon, because they claimed the right, and it wouldn't be a trespass if they had the right; and the injunction which was granted by the Court was posted on the grounds. But these defendants in this case, *Caines* and others, went upon the ground and trespassed and shot over it. I don't know whether they shot at the injunction as it was published or not, but they entirely disregarded it, and said they were not parties to the original suit and they were not agents of the defendants and that they were not "others" in the sense of conspiring with the defendants; because it was alleged that the defendants had conspired together, in the original suit, to do this; and that they were in no way connected with the defendants. And the question was as to whether the Court could deal with a situation of that sort and preserve the subject-matter that it had in litigation before it, attempting to fix the rights of the respective parties. That took the form of an application for a punishment of these gentlemen for contempt of court, although they were not parties to the original suit and were not agents or servants or any person men-

tioned or referred to in the injunctive relief. And the Court considered the case with great care, because as it said:

"Contempt of court is a specific criminal offence. The judgment is a judgment in a criminal case."

And the Court referred to the affidavit as to what they had done as the indictment. The question was raised as to whether a person not before the Court as a party could be held guilty of contempt. The Court states:

"These respondents are charged with shooting ducks on these marshes and in Duck creek—one of the creeks mentioned held by the court to be, with the marshes, exclusive property of the complainants. From the posted notices they had full notice of the existence of the injunction and of the order of this court. The bill upon which the original injunction was granted was directed against the parties named in the bill. The bill prayed leave to add other parties also charged with confederating with Caines, before then unknown, on the discovery of their names. The affidavits now under consideration do not charge these respondents with combining and confederating with Caines and the others named with him, nor do they charge him with being agents or attorneys of them, or any of them. They do charge that the injunction ran against all persons whomsoever trespassing on these marshes. There can be no doubt that, in granting full relief under the original bill, the court, whilst entering final judgment against the parties named, could, in accordance with a prayer like this in the bill, as to parties then unknown, on proper application at the foot of the decree, enter orders binding on the parties then unknown, whose names, when discovered, were brought to the attention of the court; that is to say, parties charged with conspiring and confederating with Caines and his associates. To this extent the general words 'all persons whomsoever' certainly could be used and applied. Can they be extended further, so as to reach these respondents who are not charged in the affidavits with combining and confederating with Caines and others?"

Entirely outside the bill or the intentions of the bill as framed. And the Court says:

"A person may be in contempt either by violating an express restraining order issued to him in a suit to which he was a party by name or privity, or by adequate representation, or, if he be not such a party to the suit, he may be in contempt either by aiding or abetting a party to the suit in disobeying or resisting the injunction, or by independently or intentionally interfering with and preventing the execution of the decree of the court, thereby thwarting the administration of justice, rendering nugatory its ac-

tion, and contemning the authority of the court."

It then quotes:

"It is entirely consonant with reason, and necessary to maintain the dignity, usefulness, and respect of a court, that any person, whether a party to a suit or not, having knowledge that a court of competent jurisdiction has ordered certain persons to do or abstain from doing certain acts, cannot intentionally interfere to thwart the purposes of the court in making such order. Such an act, independent of its effect upon the rights of the suitors in the case, is a flagrant disrespect to the court which issues it, and an unwarrantable interference with and obstruction to the orderly and effective administration of justice, and, as such, is and ought to be treated as a contempt of the court which issued the order."

That is quoted from in re Reese, 47 C. C. A. 90, and 107 Fed. 942.

"The record shows that on the same day, engaged in the same practices. McQuade, McDonald, Johnson, Tamplet, J. Jenkins Hucks, and Frank Hucks entered on the territory of the complainants, shooting and trespassing. They had around them everywhere notices that the court had declared this territory the exclusive property of complainants, and had enjoined all persons from going upon, shooting over, and trespassing upon these marshes. It would not be going too far to believe that there was a concert of action between these men, led by one of them who was a lawyer and trial justice. They paid no regard whatever to these notices. One would have supposed that J. Jenkins Hucks, Esq., a member of the bar, would have known better; that at least he would not have encouraged by his example such a disregard of the decree of this court. True, it was a circuit decree. But it was a decree in the full exercise by the court in its jurisdiction, and was made, certainly, within its jurisdiction; a decree rendered after full consideration and argument from both sides; and a decree, until reversed by some appellate tribunal, is the law within this jurisdiction, entitled to full faith and credit. Johnson Co. v. Wharton, 152 U. S. 256, 14 Sup. Ct. 608, 38 L. Ed. 429. One would suppose, from all that occurred in this case, that a member of the bar would not stand upon his opinion against a decree of a court, preferring his private judgment to a solemn adjudication. Wellesley v. Mornington, 11 Beavan, 181, is a case cited with approval both in the Circuit Court in Phillips v. Detroit, Fed. Cas. No. 11, 101, and then by the Supreme Court in Ex parte Lennon, . . . In this case an injunction was granted against A., restraining him from cutting timber, but it did not include either his agents or servants. B., who was the agent of A. with full knowledge of the in-

junction, cut the timber. Held, B. might be committed for the contempt, though not for the breach of the injunction. This, clearly, was the principle which induced the Supreme Court, in Re Lennon . . . to state, without qualification, this proposition:" and this is the statement of the Supreme Court decision:

"To render a person amenable to an injunction, it is neither necessary that he should have been a party to the suit in which the injunction was issued, nor to have been actually served with a copy of it, so long as he appears to have had actual notice."

So there is the highest authority for the proposition for which we stand, that a person hasn't got to be a party to a suit to be guilty of contempt. It is quite true that the plaintiffs if they had desired so to proceed in this case could have summoned in these gentlemen for contempt of the order of this Court which was so plainly and so flagrantly violated in the conduct in which they participated, if we had felt that we wanted to insist upon the last right that the plaintiffs had in the premises. The case is not less applicable because the notice was to men who according to the decision in this case, because they are attorneys, ought to have known better. We filed an application to have the injunction in the original bill extended to them so that they might have unmistakable notice and be brought under any injunction in court. The case does not less apply because if without making them parties to the suit they can be punished for contempt of Court for what they have done we certainly have the right independent, although ancillary, to proceed and ask to have the injunction extended so as to include them and put beyond question the notice that their conduct was violating, flagrantly violating the order of this Court.

The question here is not a question as to whether upon the allegations of this bill we can enjoin libel, or whether any property right is threatened by Fosbery and others. The question here presented is as to whether when this Court has granted an injunction to protect the trustees against those who interfere, those who interfere with the administration of their trust, other people who are not Directors, or their agents, can do the things that they know are forbidden, and consciously do them, to accomplish the results which the Directors are forbidden to accomplish. Do things that are forbidden to do and render nugatory the decision of this Court when the Court has attempted to protect the parties against that sort of thing by issuing an injunction, originally saying to the Directors "You must not take action which will render nugatory our decision by a series of acts such as it is said you threaten or intend to do. Therefore the test—the test of the conduct of these defendants—the test of these defendants and

all of them, is this: If the Directors themselves had done these things which these gentlemen have done and which they will not say they do not intend to do, would the directors have been in contempt? That is the question. It is not a question—it does not depend upon what is averred in this bill—it depends upon what the injunction was which this Court saw fit to grant, as a protection of the Trustees in the administration of their trust pendente lite, and are they doing anything that injures or is likely to injure the Trustees in the general administration of the trust to diminish their income, to do harm to them to any extent which will force their resignation, whether the Court says they ought to resign or have done anything wrong or not. That, we submit, if your Honor please, respectfully, is the test, and not based upon the averments of this supplementary bill or the charges made there. The test is as to whether, if the Directors were found guilty of having done things which these gentlemen have done and intend to do, would the Court say that they were in contempt of Court. If they were, then the action of these gentlemen is in contempt of Court—the action of these gentlemen, taken with knowledge in the future will accomplish the achieving of what the Directors are forbidden to do, not as to final relief, but in order that the property rights will be protected until the end of the litigation. The original injunction may have said to the Directors "You must restrain what you claim to be your rights under the Manual as the Heads of the Church, if doing those things would make nugatory the result of this suit. You must stay your hand in the exercise of authority which we understand you claim that you have as church dignitaries. You must await and abide the issue which is submitted to this Court." That is no interference with religious rights. To say the contrary would be to exalt religious rights above the power of the Court to deal with a case, and the same interference with their religious rights would meet with the same answer until the Court has done with the administration of justice in the case of Eustace v. Dickey. Any rights which you believe that you have as members of the church, or beliefs which actuate you to do certain things, must be held in abeyance, subordinated to the supremacy of the law, and the supremacy of a decree of the Court, staying the hands and the wills of all persons until by a complete decree of the administration of justice in the particular case has been performed. To say otherwise would be to say that individual minds and individual beliefs, religious or otherwise, sincerely entertained would over rule the administration of justice as it is appointed under the law and under the Constitution under which we live. That is the real issue. It is not a little issue of enjoining libel or not enjoining a libel or a

particular class of libel and not another particular class of libel. It is not a question of enjoining an interference with property rights and a question as to whether property rights exist here. It is the larger question, which I have pointed out. It is the question as to whether this Court, the Supreme Judicial Court of this Commonwealth has the power and authority to say that its decrees, temporary—temporary decrees, which it has seen fit to enter into in this case shall be respected. We therefore haven't asked in this case that the gentlemen who come from another jurisdiction having admittedly tried to undermine the injunction should be punished, but that the injunction should issue against them which would make it impossible for them to say, lawyers or laymen, that they did not understand what they were doing, and that their action was in flagrant disrespect and disobedience of what they knew was the will of this Court.

MR. CHOATE: Just a word, if I may be permitted, in reply. It is unnecessary for me to point out to your Honor's keen perception that the case cited by Mr. Whipple is not authority for the proposition for which he is now before your Honor. Indeed it is authority for the proposition that I stated, that if there was any course for him to take, one of those courses would be for him to ask the Court to attach these persons for contempt. I take it the injunction in the case he cited was so broad that anybody who violated the Court's order would come within it, because it was directed to all men.

THE COURT: I suspect an injunction could not issue and have any force—

MR. CHOATE: It did, there. His whole argument was based upon the fact that it was issued to all men.

MR. WHIPPLE: No. It is other persons of the kind there conspiring.

THE COURT: All I mean to say in response to Mr. Choate is, you cannot issue an injunction against all the world and have it effective. Go ahead.

MR. CHOATE: It is entirely beside the mark to urge what the Court should do if this were a proceeding for attachment for contempt and it is unnecessary to argue it. In that case it is not an attempt to attach these men for contempt. It is an attempt to prevent the filing of a supplementary bill to obtain an injunction. Mr. Whipple says his proposition is this, that where a Court of equity has issued an injunction against specific persons who occupied a position of power and authority and power, as the Directors did, to do things which by express authority if done would interfere with the conduct of the trust, that all the rest of the world, whether occupying similar positions or not, or whether the humblest member of the church, could likewise be enjoined.

THE COURT: May I interrupt you a bit. The case is a little narrower

than that, because Mr. Whipple of course does take a very much broader view. But these particular persons against whom this process runs are not mere strangers. They are interested. They are attached to the interest which is sought in one way or another to be reached by the original bill. They have an interest in the administration of that trust and they have an interest in the administration of the trust under which the Board of Directors act, and so while they are not privies, while I assume they cannot have been made parties, nevertheless they have an interest in it—the original bill. Now persons who have an interest in the result of any particular case knowing that the Court is endeavoring to settle a question which concerns them undoubtedly much more intimately than has been stated, took steps to do things which are alleged in the bill which made it a vain thing for the Court to decide the question. The question is whether or not the Court has power to prevent such a course of conduct.

MR. CHOATE: May I interpose just a word there. Your Honor's statement would indicate that you thought a different result would be reached by the Court whether these gentlemen occupied the position of the Trustees under that deed of trust or others. The question to be decided by the Court is not what rights these men as individuals have, it is what rights have the Trustees under the deed of trust to administrate that public charity. It makes no difference whether these men fill the chair of trusteeship or anybody else. The Court is not deciding as to them. The Court is not going to be affected in its decision as to whether they are trustees or anybody else are trustees, it is the powers vested in the trust which are to be determined by the Court. These thousand successors might be influenced to listen to their effect but it would not influence the Court one jot or tittle in the determination of it. It is idle to say that any pressure brought to bear on these three men who are regarded by the great body of Christian Scientists as unfit to hold their offices, it is not with reference to the qualifications of these men, it with reference to the powers they are trying to exercise as trustees, that the litigation arises.

Reverting once more to Mr. Whipple's proposition, that is, that when an injunction has been issued against the Directors of the Church that no member, no other beneficiary of that public charity—because that is all Mr. Fosberry is, a member of the Christian Science Church, as are hundreds and thousands of other, but there are hundreds of thousands, perhaps millions of others who may become such who are equally beneficiaries of the trust—are in the eye of the Court as much interested and possessed of as full rights of activity as Mr. Fosberry. Now the proposition for which he

stands is this: The injunction having been issued against the Directors who occupy a peculiar position of power which Mr. Fosberry does not share with them at all, and the 100,000 or 200,000 or half a million other gentlemen—how can they be enjoined by the Court from uttering any criticism of these Trustees without any trial of the issue of fact between them and the plaintiffs as to the plaintiffs' right to do what they are doing. If the trial can be confined simply to what the defendants have done, what criticisms they have uttered, while the mandate of the Court may to-day be uttered against Mr. Fosberry it may be directed to-morrow against the 100,000 other people all over the United States. If your Honor should direct it against Mr. Fosberry your Honor must be prepared to issue 100,000 other injunctions against people, if you can reach them and be prepared to punish them and send them to jail or fine them, if you once take this step.

MR. KRAUTHOFF: If your Honor please, what Mr. Whipple said about the nature of his injunction bears so directly upon our application to enjoin his prosecution of this suit I am constrained to remind the Court if Mr. Whipple attempts to make the suit of *Eustace v. Harney* stand before the Court as a suit to enforce the administration of justice, in the sense that he claims it, having a preliminary injunction issued which was not, or has not become a final injunction, he is entitled to have everybody enjoined that comes in contact with it and that failure to obey that preliminary injunction is an interference with the administration of justice by somebody who is not a party at all, is true, then it is not a suit for interference with the administration of justice, it is a suit to prevent interference with his trust. We wander so far afield in this case, perhaps it is well to get back to the points and see what *Eustace v. Dickey* was about. Mr. Whipple does not say anybody was physically interfering with his property. He said his client was removed under a power that did not exist and the master so finds. If that is confirmed by the Supreme Judicial Court that ends the lawsuit. He further contends his client was removed by a Board of five Directors acting when it should have been four. One was present who did not vote and one was absent. He says that two were not a majority of four and the master sustains him. Then he claimed that if he was not properly removable by the Board of five it wasn't valid. Nobody has interfered with Mr. Whipple's right to present these issues to any Court that will hear them. What the members of The Mother Church have done is this, say to Mr. Whipple "Very well, you are not subject to the control of the authorities of The Mother Church we shall cease to buy your publications. We do not interfere with your law-

suit; we haven't disobeyed the order of the Court; we haven't interfered at all with the due and orderly presentation of your case; we said, very well, if the Court says that is the kind of a Publishing Society you are we reserve our individual rights not to deal with you," and in these circumstances he comes into court with a bill. He says: "We ought to have the right upon a proper state of things to show that they were saying he was not obedient to the Manual and that they were stating such things for the purpose of inducing people to cancel their subscriptions to the periodicals." That certainly would not be an affront against the dignity of this Court. Mr. Whipple attempts to make a distinction between what he calls religious belief and the supremacy of the law. There is no such distinction. The law of the Christian Science case are the religious beliefs of Christian Scientists. Mr. Whipple stands before this Court charged with the duty of the administration of a trust—his clients stand here charged with the administration of a trust created for the promotion of the interests and religion of Christian Science, and whenever he undertakes to say the law is one thing and Christian Science is another, he separates himself from the trust he is to administer and ceases to have any standing at all. But to come back to his proposition. Mr. Whipple is claiming the members of The Mother Church do not have a right to tell other members that Mr. Whipple's clients are not obedient to the Manual; they are not administering this trust in accordance with the directions of Mrs. Eddy and says that the members of The Mother Church have ceased to patronize him. That does not present any question of violating the dignity of this Court. It presents the question, what are the relations of members of The Mother Church to the Trustees and to the Christian Science Board of Directors; and we are entitled to have the subject fully presented, fully heard and determined, and it is one which cannot be tried fragmentarily. So if Mr. Whipple's bill states a cause of action at all—I am not claiming it does—or that the demurrers should not be sustained—but if it does present any cause of action at all it presents a cause of action for interference with property that he is in charge of, and the property that his clients are to administer is what is suffering and not the dignity of this Court or the administration of justice. I want to point out that his suit is a suit to protect himself against interference with property in his possession. At the last argument of this case he practically took the position that I have stated, and when Mr. Choate stated his concept of his bill and I stated mine, Mr. Whipple did me the courtesy of saying that mine was nearer right than

Mr. Choate's, by reason of the fact that I had been in the case longer, not by reason of any inherent difference in Mr. Choate's ability and mine. He is asking the Court now to enjoin people from cancelling subscriptions to the periodicals. He cannot come into court and say that that is something that has to do with the administration of justice or the supremacy of the law. They have a right to cancel them, whether he is violating the Manual or not. We have a right to cancel them under the law of the court as well as the law of religion because in that respect they are synonymous and concurrent and identical.

MR. WHIPPLE: The distinguished friend of the Court who has just addressed your Honor has so far mistaken the situation as is indicated by what he has said, that I am led to say another word. To be sure I agree with him that the purpose of the original bill was to prevent the removal, but the injunction means not only that the removal shall be prevented but that in the meantime these Directors shall be restrained from doing certain things which would render the decree of the Court that he shouldn't be removed entirely nugatory, null and void, and the question is whether that injunction shall be abided by. The Directors might just as well come into court and say "We are not bound to take these periodicals unless we see fit to take them." No one claims they are bound to do it, or that any particular member of the Church is bound to do it, but the Directors were enjoined from this: First let me see what we allege. We allege that they intend not to apply to the Court but attempt to force the Trustees out of their position by injuring or ruining their business. Now the Court said "that shall not be done until after we have decided our case, anyway, and in the meantime the Directors must stay their hands." And then this is the injunction: They are forbidden "to impair, destroy or in any way injure the business of the Christian Science Publishing Society as conducted by these Trustees." "Or in any way carry out any threat or purpose to injure the business of the Publishing Society either by creating or maintaining a publishing society" etc. They are also directed to refrain from any action intended directly or indirectly to impede or interfere with the plaintiff Rowlands or the other plaintiffs in the discharge of his or their respective duties as Trustees under the trust instrument, and that injunction stands to-day. The purpose of it is to hold the status quo so that until the Court determines what the rights of the parties are, and the question that is presented is Shall it be done, or shall what the Court has forbidden the Directors to do be accomplished by men acting ostensibly or claiming to act in behalf of the Directors and the result be ob-

tained by that action which the Court has forbidden to be done by the Board of Directors. Therefore I say again, the test is here, whether the action that these gentlemen are taking, if taken by the Directors would be a violation of the order of the Court? The Court surely will not permit others to do in behalf of the Directors, although the Directors did not ask them to do it—would not permit others to do in behalf of the Directors, claiming to act in behalf of the Directors—what they have been forbidden to do; otherwise that injunction would be nugatory and almost farcical. If it should say "You four or five shall not do these things, but if anybody else not inspired by you want to come in and render this action nugatory by similar actions on their part, we don't care." Of course any such statement as that would be the statement of an absurdity.

The COURT. Since the filing of this bill I have given the matter a good deal of thought from the viewpoint of principle, and I have found no case, as I said before, that has a direct bearing upon this matter; but I am of the view that the court has such power, and, having it, ought to exercise it, and it follows that my duty is to overrule this demurrer, and I do so overrule it. You may proceed.

Mr. WHITE. May it please the court, may I call the court's attention at this time to my motion made on behalf of Mr. Davis and Mr. Harney, for the dissolution of the temporary injunction issued by your Honor at Mr. Whipple's request at the outset of this case, as being contrary to the provisions of Chapter 515 of the Acts of 1913, which provide that no temporary injunction shall be issued without an opportunity—

The COURT. Is that your only ground?

Mr. WHITE. Yes, your Honor.

The COURT. I deny the motion.

Mr. DODGE. If your Honor please, I have the same motion pending on behalf of my clients who are members of the so-called Information Committee, and my motion that the injunction be dissolved is not based solely upon the provision of that section of the statute. It is based, however, upon the right of these people to an immediate hearing. They are all here today, with the exception of one who is in California, they are entitled to be heard; and if the court for lack of time or for any other reason cannot hear them they are entitled to have the injunction dissolved, and have the burden placed upon the plaintiffs of establishing at a hearing upon the merits that they should be enjoined. They have been under this injunction for many weeks. They have done none of the things charged in the bill. They are under an injunction which goes far

beyond the allegations of the bill as to the acts which it is alleged that they did, and they wish, for all of these reasons, to be heard.

The COURT. But why shouldn't application have been made sooner?

Mr. DODGE. Because they have not been as a matter of fact very seriously interfered with by the injunction. They have had no intention of doing any of the things charged in the bill. They have in certain particulars been interfered with, but the complications and complexities of the case have been such that there has not been really time to prepare for an application to the court as yet.

The COURT. Do you say, then, that you make a motion that if the court is in a position where it cannot reasonably give attention to a reasonable application it should result in the dissolution of the injunction?

Mr. DODGE. No, your Honor. I understood,—I was not present at the last hearing—but I understood at that time that the hearing upon the merits of the case was set for the 24th. Then as time went on it became fairly apparent that the merits of this case could not be heard by the court today, and we filed a motion; but in one way or another I think that my clients should be heard.

The COURT. I agree absolutely, and so far as the other counsel are concerned I agree absolutely, that it is their right to move to have an immediate hearing before me. I do not mean when I say "immediate," of course, as soon as the breath has uttered the words, but immediate in the sense of reasonably immediate; that is to say, as soon as may reasonably be after the application. It is not possible, of course, to have that hearing this morning, apparently.

Mr. DODGE. Of course the statute gives them the right to be heard on two day's notice at any time, and we are here ready for hearing.

The COURT. As soon as I have reasonable opportunity I will be very glad to afford the opportunity.

Mr. PARKER. I presume your Honor will hold the same attitude with regard to Mr. McKenzie?

The COURT. Has an application been filed for that purpose?

Mr. PARKER. I filed a motion to have the injunction against him dissolved more than a week ago.

The COURT. The other counsel desire to make the same motion, I assume?

Mr. WHITE. Yes, if your Honor please. My position in regard to the matter is this. As Mr. Parker told you the other day, the plaintiffs here took the opportunity upon the issue of that temporary injunction to broadcast that fact. Now it is not an easy thing to say that a man is not hurt by an injunction based upon charges of improper conduct. We say that he is, and therefore it is no more than right that it should appear publicly

that that injunction ought not to have been issued under the circumstances. As it stands today, if Mr. Whipple desires a temporary injunction or a permanent injunction, so far as my clients are concerned, they are ready to meet that issue here now.

The COURT. I hear these same arguments every time I come into court. There must be some limit to my memory. Now we will take up the next real question.

Mr. KRAUTHOFF. There is one detail, if your Honor please, that we might dispose of now. The Attorney-General tenders his answer in the case of Krauthoff v. Attorney-General and we have no objection to its being filed at this time.

The COURT. Very good.

Mr. KRAUTHOFF. But there is an intimation in the answer that he is about to file an information, and for that reason he asks to be excused from answering to our bill; and would it not be proper to fix some time within which that should be done, because that leaves our suit pending until he brings in his information?

Mr. ALLEN. That information I expect will be filed today.

The COURT. Well, Mr. Krauthoff says why shouldn't you file an answer to his bill, in substance. He puts it to be to fix a time. Have you filed an answer to his bill?

Mr. ALLEN. Yes, your Honor. (To the Clerk.) Will you show it to the Court?

Mr. KRAUTHOFF. But the intimation I made was this—that if that is to stand as his answer in the suit—

The COURT. Let me see it.

Mr. KRAUTHOFF. Excuse me.

The COURT. It would seem to me that this was a sufficient answer in the matter.

Mr. KRAUTHOFF. I did not object to the sufficiency of the answer, if your Honor please, I did not make that point. The point I made was this: That inasmuch as that leaves our case pending awaiting his information, that the information should be filed within some time to be fixed by the court, to which the Attorney-General has answered that he expects to file it today.

The COURT. Yes; very well.

Mr. KRAUTHOFF. So it is not necessary to pursue the subject further.

The COURT. Yes; very good.

Mr. WHIPPLE. I am not quite sure whether there are any other demurrers that are now outstanding; some of them have been waived but I cannot quite keep track of all of them.

The COURT. Are there any other matters that have not been stated—any preliminary matters?

Mr. WHIPPLE. Mr. Parker has waived—have you waived your demurrer?

Mr. PARKER. I didn't file one.

Mr. WHIPPLE. Didn't file one?

Mr. PARKER. I didn't demur, your Honor. I filed a motion for a Master, and that matter was taken up Friday. I don't suppose it is necessary to say anything more about that.

The COURT. No. As we said on Friday, that is a matter that would not concern you, your view, as far as the question of—

Mr. PARKER. I beg your Honor's pardon, I did not hear that.

The COURT. I said, as we said on Friday, the matters which were to be referred to a Master would not be involved in this preliminary hearing to the extent which would apply to a hearing on the matter before a Master.

Mr. PARKER. I so understood.

Mr. WHIPPLE. Very well. Then do I understand that we are about to resume the—

The COURT. I think the deck is swept.

Mr. WHIPPLE. — the hearing which was suspended some weeks ago?

The COURT. We will take a recess until twelve o'clock.

(Short recess.)

FREDERICK A. BANGS, Resumed.

Cross-Examination, Continued.

Q (By Mr. Whipple) At the former hearing I asked you for certain things which you said were in Chicago and not here, Mr. Bangs.

A Yes, Mr. Whipple.

Q Have you them here now? A I think they are here, yes; at least, I had a search made for everything I had, and I brought everything along, and I believe everything is here.

Q Will you produce them? A. What is it that you desire?

Q All the things I asked for. A. Well, I don't remember now just what they were, Mr. Whipple.

Q Well, anything that you brought. You must have known what to bring. A. I think I brought everything.

Q All right; let us have everything. A. There are one or two things that I want to call your attention to that were not brought out at the time before.

Q Well, I merely want those things that were brought out. A. Yes; those only.

Q In the first place, I would like your books of charges you made for professional services to the directors. A. I have a copy of the account here if you would like it.

Q All right; let's have that. In order to save time, Mr. Bangs, if you can have some of your counsel look, unless you can readily get them. A. Yes; very well.

Q Don't you think you better take those on the witness stand?

A Here is a copy. (Handing paper to Mr. Whipple.)

Q Did you yourself prepare this? A. No, sir.

Q Who did? A. It was prepared by the bookkeeper in my office.

Q Did you verify it? A. To check it over?

Q From your books, yes. A. I did not, no, sir.

Q So you have no knowledge whether it has all the items on your book or not? A. I think it does.

Q Yes; but you haven't checked it or verified it yourself? A. I haven't checked it, no, sir.

Q Who is your bookkeeper? A. Miss C. E. Olds.

Q She isn't here? A. She is not.

Q Very well. Have you the 1920 account? A. I have no account other than that.

Q I thought you said you had done something in 1920. A. I have, but I keep no account of them except in what we call a blotter ledger, without charges.

Q Where are those? A. Those are in my office at Chicago.

Q Well, didn't you understand that as a lawyer what I wanted was not how much you charged for what you did but a statement of what you did? A. I did not so understand you, no.

Q And do you mean to say that you have come here with no memorandum of any kind, or statement of what you have been doing for the directors since the first of the present year? A. That is correct, yes, sir; so far as I know I think it is not here.

Q I thought you said you brought everything? A. I did, as I thought.

Q Especially some things you wanted to call to my attention that I had not asked for? A. Well, there were some things there that I discovered that I thought perhaps you ought to know.

Q Well, you remember that I asked you about your activities in behalf of the directors in 1920? A. Yes, sir.

Q And the only excuse you give for not bringing them is that the charges had not been carried out? A. No; I didn't think that you wanted those or I certainly would have brought them.

Q Why did you think I wanted those of 1919 rather than those indicating your more recent activities? A. These are the only charges for moneys received and moneys paid out—what I had from the directors.

Q What I wanted today was not what money you had received but what activity you had indulged in, especially since the first of the year? A. I can tell you those if you want to know them.

Q Of course I have the option of asking to have your book entries with regard to them. A. Yes, sir; and if I had known that you wanted them you should have had them.

Q But it never occurred to you? A. It did not.

Q And you have not here a statement of your activities at all? A. No, sir.

Q All you have here is your account of receipts and disbursements?

Mr WHIPPLE. (To the Court) I

should like to show it to your Honor as a thing which I think it would appear I did not ask for.

Mr MORSE. I haven't seen it yet, I haven't had an opportunity. No objection to your showing it to his Honor first.

Mr WHIPPLE. Well, I will let him look at it.

Mr MORSE. If you wish to show it to his Honor first I have no objection to your showing it to his Honor first.

Mr WHIPPLE. I would like to have you look at it to see if you think it complies with the thing I asked for, which was what his activities had been in behalf of the directors and not what money he had received from them merely.

Q Is it a habit in your office for some one to put down a memorandum of what you do for your clients from day to day? A. It is supposed to be done each day.

Q By whom? A. By the person who does the work.

Q Would that be by you? A. If I did it, yes.

Q You put it on the blotter yourself? A. No, sir, I would dictate it.

Q To whom? A. To one of the stenographers in the office.

Q And it would thus be put onto the— A. On what we call the blotter ledger.

Q On the blotter. And you haven't a copy of that? A. I have not, no, sir.

Q But that would show a statement contemporaneous with each service of the services that you rendered to the directors of the First Church? A. It would.

Q You never thought of bringing that or a copy of it? A. It didn't occur to me or I certainly would have brought it.

Q You knew as a lawyer that the subject of this inquiry was as to the nature and the extent of your activities? A. I thought that you had finished with your examination of me as to what I had done as a lawyer.

Q Well, I asked you to bring things as to your activities as a lawyer didn't I? A. If you did I didn't know it, Mr. Whipple.

Q Very well. I think, as you stated the other day, you are still under retainer for the directors in certain services? A. Yes, sir; still carrying on some litigation for The Mother Church.

Q Do you know a man by the name of Veasey in Chicago? A. Charles Veasey?

Q Yes. A. Yes, sir.

Q How well do you know him? A. I know Mr. Veasey quite well.

Q Have you known of his activities in the subject matters with which we are dealing? A. I know of his being in my office once or twice.

Q How frequently? A. Perhaps more than that.

Q What? A. I know of his having been to my office.

Q About what? A. Well, he has

talked to me about the situation here in Boston several times.

Q When last? A. Oh, I should think it was somewhere about the last of April.

Q Would your blotter show anything with regard to— A. With him?

Q Would it show anything with regard to your conferences, with him? A. I think not.

Q What? A. I think not.

Q But you are not even sure of that? A. I am quite sure that as far as I am personally concerned there has been no mention of any conference with Mr. Veasey.

Q Has he told you what he has been doing? A. No, he has not.

Q Nothing about it? A. No, sir.

Q What? A. No, sir.

Q And you didn't know, and don't know today, that he has done anything with regard to this matter of the cancellations of subscriptions? A. As to whether or not he has I don't know.

Q And you have had no talk with him on that subject? A. On cancellation of subscriptions?

Q Or doing something with regard to the situation in Boston, as we will call it,—yes, the situation in Boston? A. Why, I think that he talked with me at one time in reference to the conference which was held on April 2d, 1920.

Q When did he talk with you about that? A. It was some time after the conference was called, and before it was held. I should think a day or two before it was held. It was held on April 2, 1920.

Q What had he to do with that? A. Nothing, except that he is a Christian Scientist, and he was a delegate to that conference.

Q And talked with you before the conference was held? A. He talked with me before the conference was held, yes, sir.

Q Did he submit to you, or speak to you about, the Grimes letter, so-called? A. I don't remember. I have a copy of the Grimes letter in my record.

Q Where did you get the Grimes letter? A. I don't know. It may have come from Mr. Veasey.

Q When did you get it? A. Some-time this spring.

Q Well, that's of course— A. That's as near as I can give it to you.

Q Of course—but cannot you tell us any better than that? A. No, sir.

Q Do you have here a copy of it? A. I have a copy of it here.

Q Cannot you tell whom you got it from? A. Not unless there is a memorandum on it itself telling me.

Q Cannot you tell the month when you got it? A. No, sir.

Q Do you know when it was written? A. No, sir; I don't remember the date of it.

Q Do you want to refresh your recollection about that?

A. Why, I would just as lief, if you desire me to.

Q Don't you desire to? A. It doesn't make any difference to me.

Q I didn't know but that you wanted to make a full disclosure.

A. I would be very glad to; I would be very glad to produce that letter if you desire it.

Q No, I want you to refresh your recollection about it, and then I want to question you as to your activities in regard to it—when it was sent out. A. Then I will look at it.

Mr. WHIPPLE. All right. I suggested that you had better have your papers before you, to obviate the necessity of these trips.

The WITNESS. Yes, I had them, but counsel wanted to look at them. [Referring to letter] This would indicate that one of them was dated January 21, 1920, and the other January 5, 1920.

Q Now can't you tell when you received them? A. Not any better than I have already told you.

Q You couldn't tell within two months? A. No. It was some time in the springtime of 1920.

Q Do you reckon April as the first spring month, when you refer to "the springtime"? A. Oh, no, I should say March, April, or May.

Q March, April, or May. Can't you tell whether you received it this month? A. I am quite sure it was not this month.

Q Well, then, that leaves it to March and April? A. Well, I should think it was in March or April.

Q And within those you cannot tell? A. I can't tell.

Q Nor from whom you received it? A. No, sir.

Q Who is Grimes? A. I don't know him.

Q But you have read his letters? A. I have.

Q Did Mr. Veasey tell you that he had sent out these Grimes letters with a copy of this vote of the conference in Chicago? A. I do not remember of his having done so.

Q You knew it, did you not? A. I did not until you just told me. That is, I didn't remember it if I did know it.

Q Who sent out these resolutions, a copy of which you have given? A. They were sent out by the clerk of the conference.

Q Who was that? A. A Mrs. Johnson.

Q Did Veasey have anything to do with it? A. I think not; at least, if he did I didn't know it.

Q Has Veasey been appointed to any position there in Chicago—a committee, or anything of that sort? A. None that I know of.

Q What? A. None that I know of.

Q Didn't he tell you that the Grimes letter had helped wonderfully in giving information to individual churches up to now, or that in substance? A. Not that I remember it.

Q Do you deny it? A. Why, I can't remember it if he did.

Q What was the time when Mr. Neal was out there? A. I think it was the latter part of March, 1920.

Q Had you read the Grimes letter then? A. I can't say. I think I had; that would be my best judgment of it.

Q Now, what did you talk with Mr. Neal about while he was there?

Mr. MORSE. I pray your Honor's judgment on that form of question.

The COURT. I do not see any objection to it. What was the subject-matter of the conversation, is meant by that, I suppose.

A. The subject-matter of our conversation was the subject of my letter, and his letter to me.

Q Had the conferences of churches been called together?

A. At that time?

Q Yes. A. I think not.

Q The conference was on April 2, and you say this was March what? A. The latter part of March.

Q Well, what part,—can't you tell? A. I think it was about the 28th or 29th that he was there. That is my judgment.

Q How soon was the conference of churches called after Mr. Neal was there? A. That I don't know, because I didn't call it and I didn't know of its call at the time.

Q Who first spoke to you, or to whom did you first speak, about a conference of churches, after Mr. Neal was there? A. I think to the clerk of the Fifteenth Church.

Q And that was when? A. That was a day or two before the second of April; the night before, a night or two before.

Q Well, then that might have made it the 31st of March, the very day he was there? A. It may have been the 31st, or it may have been the 1st of April.

Q And the 31st may have been the very day that Mr. Neal was there? A. I think not.

Q Would you say it was not? A. It was on a Saturday that he was there, and a Sunday.

Q Yes. What days were those of the month? A. I couldn't tell you without—

Mr. WHIPPLE. [To the clerk of the court] Mr. Flynn, do you happen to have a calendar?

[Mr. Flynn hands calendar to Mr. Whipple.]

Q March 31 was a Wednesday. Are you sure he was not here following that—was not in Chicago? A. Of course I don't know that he wasn't here, but I didn't see him.

Q How much time did you spend in Mr. Neal's company? A. All told I should think probably two or three hours.

Q Wasn't he your guest there? A. Where?

Q In Chicago. A. No, sir.

Q Where were you during those two or three hours? A. Part of the time I was at luncheon with him at

the LaSalle Hotel; part of the time I was in my car driving to and from Seventh Church; part of the time in services in the Seventh Church; and then part of the time in the evening driving to and from Fourth Church, and with him at service there.

Q Those were the only two churches you attended? A. And then he was in my office on the Monday morning following.

Q Those were the only two churches you attended? A. Those were the only two churches; yes, sir.

Q What did he come in for Monday morning? A. He came in to see Miss Archibald.

Q Who was she? A. She was the one whom I recommended before as being a good Second Reader.

Q Did he meet her there? A. He did.

Q Were you present at the conference? A. I was.

Q How long was that? A. Perhaps 15 or 20 minutes.

Q You saw him then on Saturday and on Sunday and on Monday? A. Yes, sir.

Q Those were the only days? A. Those were the only days.

Q And you never spoke to him about the situation in Boston? A. I have no recollection now of having done so. I may have done so, however.

Q Well, can you remember anything you said to him? A. Yes.

Q About the situation in Boston. A. No, sir.

Q You can't remember anything at all? A. No, sir; I do not remember anything now that I said to him about the situation in Boston.

Q Did you refer to the fact that you were here when the original injunction had been served? A. I think not.

Q You did not mention that at all? A. I think not.

Q I think you said that you regarded this action of the churches as one of the most important as affecting Christian Science? A. I stated that, if I remember correctly, to the conference.

Q Mr. Neal was one of the Board which you recognized as the head of the Christian Science movement? A. Yes, sir.

Q You regarded the situation here in Boston as one of supreme importance to every Christian Science believer, did you not? A. I do so regard it.

Q You did at that time, didn't you? A. Yes, sir.

Q And you had already suggested that something be done by the field, or the churches, had you not? A. If you call my motion in Fifteenth Church a suggestion; yes, sir.

Q The situation you had much at heart and much in your mind, as a Christian Scientist, evidently? A. I have it very much at heart; yes, sir.

Q You did then have it, didn't you? A. I did; yes, sir.

Q And still you said nothing about it to one of the leaders of the Church?

A. My recollection is that I didn't—Nothing about what?

Q Nothing about this situation which you had so much at heart and in your mind. A. I think I said nothing about the controversy here in Boston. If I did I don't remember it.

Q I say you said nothing about this subject of the controversy between the Trustees and the Directors, although you felt that it had precipitated a grave crisis in the Christian Science matters? A. If that was said I do not remember it.

Q Well, I say you recognized that it was a matter of great importance to Christian Scientists? A. I do.

Q And still when you were spending parts of three days in the company of Mr. Neal, one of the leaders of the movement, you did not say a word to him about it? A. Well, that is my recollection, Mr. Whipple.

Q Why not? A. Well, I can't tell you unless perhaps an analysis of my thought was that Mr. Neal might not like to talk about it.

Q Why not? A. Because of the injunction of this Court.

Q Yes, that's right. You did not talk to him about it on account of the injunction of this Court? A. That is, I don't know that that was my reason, but that is the way that I would analyze it now.

Q Then you knew of the injunction of this Court? A. Oh, yes, sir.

Q And knew of its terms? A. I did.

Q And you, spending three days, or parts of them, with Mr. Neal, knowing the injunction which he was under, said nothing that could possibly refer to this matter of the controversy between the Directors and the Trustees, which you thought a matter of such serious importance to Christian Science,—that is the way you leave it? A. That's my recollection.

Q Because you knew of the injunction? A. Well, I can't say that that was operating in my thought at that time, but as I analyze it now I think perhaps it was.

Q You cannot think of any other reason why you should fail to speak to a leader of your church on a matter of such burning interest, can you? A. No, sir.

Q Then shortly after you were called to, and presided at,—a church was to take resolutions, and you participated in the meeting. That is correct, is it? A. Yes, sir.

Q Now, did you take any pains to ascertain whether your conduct on an occasion which you said was one of the most vital, you believed one of the most vital and important, to Christian Science, was agreeable to, or approved by, the leaders of that great Church? A. Did I consider that?

Q Did you take any measures whatever to find whether the conduct which you intended to indulge in, and

did indulge in, was agreeable to these leaders? A. No, sir.

Q None whatever? A. None whatever.

Q That is, although you knew you were about to take a position in the matter at a conference which was the most important, I think you said, that had ever been held, you took no action to find whether, made no attempt to find whether, the action that you contemplated would be agreeable to the leaders of your Church? A. I took no such action.

Q Why not?

Mr. MORSE. I pray your Honor's judgment. Your Honor has excluded motives why from the consideration of this case. Now, if we are going into that reason we want to show the motive that actuated him.

The COURT. I assume this is not directed to motive, but it is directed towards ascertaining whether or not the witness is telling the truth.

Mr. MORSE. It involves the question of motive.

Q Why not? A. Because I was acting upon my own judgment.

Q Why did you act upon your own judgment in regard to a matter so vital to the Church, without a conference directly or indirectly, or in any way ascertaining whether your conduct met with the approval of the leaders of the Church? A. Because I believed that I knew I was right in what I was doing.

Q Knew you were right? A. Yes.

Q Now, supposing the leaders thought you were wrong, what would your position then be,—would you submit your views to them? A. That I cannot tell now. I would have to wait until it occurred, then I would determine.

Q Then you now say that irrespective of what the leaders felt regarding a vital matter of policy regarding the Church, you would do what you thought fit, without seeking their approval or disapproval?

Mr. MORSE. I pray your Honor's judgment.

A. I have not so stated; I didn't say that.

Q What did you say? A. I can't tell until the occasion arises.

The COURT. I don't think the witness needs any protection.

Q When did you first see these resolutions, or a copy of them?

A. I think after the conference.

Q You read them when they were passed by the conference?

A. I did not.

Q Who did? A. Mr. Jenks.

Q Did you approve them? A. At that time?

Q At any time. A. I had no occasion to approve them one way or the other at that time.

Q Do you mean that, Mr. Bangs? A. I do.

Q What? A. I certainly do.

Q Did you approve them when you read them after the meeting? A. I did.

Q Cordially? A. Yes, sir, cordially. And do now.

Q You noticed this part of the resolution, did you not:

"Whereas said Trustees in furtherance and emphasis of such disobedience have instituted and are prosecuting in the Supreme Court of the State of Massachusetts litigation whereby they seek a judicial determination of their alleged independence of said Board of Directors"

That is a part you approved of, is it? A. Yes, sir.

Q That is, it is your position that the Trustees by appealing to the Supreme Judicial Court of Massachusetts for a construction of their trust as indicated in Eustace v. Dickey, violated their duty as Christian Scientists? A. Yes, sir.

Q In other words, it was your position that this suit itself constitutes a defiance? A. No, sir.

Q What? A. No, sir.

Q What is your position about Eustace v. Dickey? A. My position is that these three men are Christian Scientists and members of The Mother Church, and that by defying the Board of Directors and filing a bill to enjoin them from operating as they think wise they have forfeited their right to be Christian Scientists.

Q Yes, and still you believe that you had a right at a conference of churches in Chicago to deal with a proposition which you say is one of the most vital that has ever appeared, without knowing whether the Directors approved it or not?

A Will you repeat that question?

Q [Read] "Yes, and still you believe that you had a right at a conference of churches in Chicago to deal with a proposition which you say is one of the most vital that has ever appeared, without knowing whether the Directors approved it or not?"

A Yes, sir.

Q Well, how are you in any different position from the Trustees? A. I am not.

Q And still you say that you have a right, maintain the right, to go ahead on one of the most vital things affecting the Christian Science Church, without finding out whether the Directors approve it or not, don't you? A. Yes, sir.

Q And you assert that any number of members of the Mother Church who desire to do so can go ahead as they think is right, quite irrespective as to whether the Directors of the Church think that that movement is right, and as affecting one of the most vital issues in the Christian Science movement, don't you? A. No, sir.

Q Well, then, how have you that right without ascertaining whether it has the approval of the Directors, unless others have the same right? A. Your question in reference to the others was "against the will and direction of the Directors." Your question

to me was whether or not I know how they felt upon the subject.

Q No, my question was as to whether you claim the right to go ahead without knowing whether they approve or not? A. I do.

Q What? A. I do.

Q That is, without asking whether they approve or not?

A Yes, sir.

Q And you say that every Christian Scientist has a right, all Christian Scientists have a right, to meet in their churches and deal with propositions affecting vitally and fundamentally the Christian Science movement, without knowing, or caring, if you please, whether the Directors approve or not?

A No, sir.

Q Well, without knowing whether they approve? A. Yes, sir.

Q But they must care whether they approve or not? A. Yes, sir.

Q And they must be sure in their own minds that the Directors approve, even if they have not said so? A. As to that, I don't know.

Q Well, then, what do you mean by saying they must care whether the Directors approve or not, though they need not know it?

A Because it is their duty in my judgment to be loyal to the Board of Directors of The Mother Church.

Q Ah, that's it, that's it, that's it. And therefore in loyalty to the Board of Directors, before you go ahead and do anything, before the churches go ahead and do anything they must be morally certain, although the Directors do not say so, that they are acting with the approval of the Directors. That is it, is it? A. No, sir.

Q Well, you said a moment ago that they must be morally certain that the Directors did not disapprove, didn't you? A. There is a difference between approving and disapproving.

Q Of course. They must be morally certain that the Directors do not disapprove,—is that correct? A. I would feel so.

Q And when you participated in passing these resolutions you were morally certain that the Directors did not disapprove? A. I was morally certain that they would not disapprove.

Q Would not and did not? A. I have not heard of their disapproving.

Q That is right. And you have heard a lot of these actions being taken, have you not,—similar actions? A. I have heard of some, quite a number.

Q And that people have stated that although the Directors could not say so, yet they knew very well how the Directors felt about it, haven't you? A. I think statements of that kind have been made.

Q Yes. And you and those who participated with you in these resolutions knew that if the Directors should say that they did approve them that the Directors would be guilty of contempt of the order of the court, did you not? A. I can't say that I knew that.

Q Well, that is your opinion as a lawyer, isn't it? A. My opinion is that they thought perhaps they might be disobedient to the judgment of the court if they should make such a statement.

Q How do you form your opinion on what they think? A. Just by my own judgment of it.

Q Have they said anything to lead you to think that?

A Not recently; but they have said something of that kind, yes.

Q That led you to think just what I stated a moment ago?

A Yes.

Q What? A. Yes, sir.

Q That is, that they would approve this being done by the churches? A. No, sir.

Q Would not disapprove this being done? A. No. That it might be within the injunction of the court for them to express their opinion.

Q For them to express their opinion about it? A. Yes.

Q But you had no misgivings in your own mind as to how the Directors viewed the action of the churches, did you?

A I don't know, Mr. Whipple.

Q Well, I don't ask you that. I asked you whether you had the slightest misgivings in your own mind as to how the Directors viewed it? A. Sometimes I have, yes.

Q No, I mean at the time you participated in passing these resolutions. A. I think at that time I didn't give it that thought.

Q That is, you went ahead without caring? A. I was presiding merely at the conference at that time.

Q Now, when you did give it the sober thought that a Christian Scientist ought to give to such an important matter, did you consider whether it was probably with the approval of the Directors that these things were being done? A. I was quite sure that it was not with their approval.

Q But not with their disapproval? A. I had not heard of any mention of disapproval on their part.

Q If you had heard of any disapproval on the part of the Directors that you thought was a sincere expression of disapproval, you would not have gone ahead at this meeting, would you? A. That I could not say, Mr. Whipple, because the contingency did not present itself.

Q Well, did you think you would? A. I don't know what I would have done.

Q Well, as a faithful, loyal Christian Scientist would you, if the Directors had given an intimation that they did not like to have such resolutions passed, still gone ahead and passed them? A. I can't say.

Q Do you say that honestly, that you cannot say whether you would then have still gone ahead? A. Mr. Whipple, I say nothing except I say it honestly.

Q Well, I ask you to reflect upon that again. Do you state before his

Honor that if you had believed, or had received an intimation, that the Directors did not desire to have these resolutions passed you would still have participated in the passing of them? A. I can't say.

Q And you decline to say? A. Because I can't.

Q As a loyal Christian Scientist, believing in the Directors' authority, would you have favored the passing of these resolutions, and participated in them, if you had received what you believed was an authentic intimation from the Directors that they did not desire it done? A. I can't say, Mr. Whipple, whether I would or not.

Q You decline to answer that? A. No, sir; I am answering it.

Q Well, you say that it is the duty of Christian Scientists to follow and obey the wishes of the Directors, do you not?

A I wouldn't put it quite so strongly as "the wishes."

Q How strongly would you put it as to the duty of Christian Scientists, as to the obedience or deference to the wishes of the Directors? A. I would say the direction of the Board of Directors in a matter of which they have cognizance.

Q What? What is that? A. I would say it was Christian Scientists following the direction of the Board of Directors in a matter of which they had cognizance.

Q Who decides what matters they have cognizance of? A. They do.

Q It is with reference to no matter as to which the Directors said they had cognizance? A. It is the duty of every Christian Scientist to follow what they the course the Directors determine.

Q Follow their wish? A. No, their direction.

Q How about if they could not express their wish, what would you be bound to follow—what you thought was their wish? A. I do not understand your question.

Q Isn't it perfectly plain? A. It may be to others, but not to me. Will you state it again?

Q No, I won't state it again if you as a lawyer cannot comprehend it. I will give you time to think about it if you want to. A. I cannot answer it without its being restated to me.

MR. MORSE: I object to the question on the ground that this is all speculative matter.

THE COURT: I think this is in the nature of cross-examination.

MR. MORSE: That is my only objection.

THE COURT: Go ahead.

THE WITNESS: I should like to have the question repeated.

Q (Repeated by the stenographer) How about if they could not express their wish, what would you be bound to follow—what you thought was their wish? A. I wouldn't think so.

Q You wouldn't think so? A. Yes.

Q Have you talked with Mr. Smith, counsel for the Directors recently? A. I spoke to him in the room here at the last hearing.

Q When before that had you talked with him? A. My recollection is that it is not since I was here in March, 1919.

Q He has never been present at your conferences with the Directors?

A. I think he was present at one conference, yes.

Q When? A. That was in March 1919.

Q Did the Directors ask your advice at that time?

MR. MORSE: I pray your Honor's judgment. He has been specially excluded from going back to anything that took place before March 25, the date of filing this bill.

MR. WHIPPLE: This is subsequent to filing this bill. I mean after the injunction had been granted.

THE COURT: You may answer. A. I don't remember that they asked my advice at that time. I will tell you what the subject matter of my interview was, if you desire it.

Q My question was whether they asked your advice at that time? A. I don't remember.

Q Have they ever asked your advice with regard to these matters connected with the trustees? A. My best judgment is that they haven't, but they may have done so and I have forgotten it.

Q Have you given them advice or suggestions with regard to the matter? A. Yes.

Q When first? I think prior to the filing of the bill was the first time.

Q When after that? A. And after that I think a day or two, I am not sure. Then I have written them some letters giving them some advice.

Q On the matter of the trustees? A. Or rather requesting them to take certain action.

Q How recently? A. Oh, that was all within the last thirty days—the last ninety days, I will say.

Q There was some earlier than that in 1919? A. Yes.

Q Yes. About how many times in 1920 have you written advising them? A. I think but once.

Q And that was within ninety days? A. I should say so.

Q Do your book accounts show it? A. My book accounts?

Q Yes. A. No, sir; because it was not at their request.

Q Your blotter. A. I don't think it does, the reason I seldom—

Q I didn't ask the reason. I asked whether it does? A. It does not.

Q Are you willing to telegraph for it to be sent on? A. Certainly, you may have anything in my office or that I have.

Q Well, let's make it very clear now, we would like the original—what we want in writing is the original entries made by you since the injunction

was granted on March 19 up to date. A. Made by me individually.

Q No, or that anybody made there with reference to services to the Directors or to the Church, or under whatever heading, showing your activities in the matter in dispute between the trustees and the Directors. I wonder if I make it clear? A. I think you do.

Q I should think you would have to bring your entire book here, so as to have it here for the purpose of examination. A. It will probably have to be sent by express, Mr. Whipple.

Q Then you will be sure to have enough? A. Yes.

Q We wouldn't go into all the other activities, but merely into this one in regard to the Christian Science matter. A. I trust you for that, Mr. Whipple.

Q By the way, you spoke of visiting and addressing the churches outside of your own in Chicago? A. Yes.

Q Which ones? A. The First and Eighth, I think it was; I think it was the Eighth.

Q When did you visit them? A. Shortly after my return from Boston. I cannot say positively when it was.

Q Which return from Boston? A. When I was here at the time the bill was filed.

Q Were you invited to address them? A. Yes.

Q By whom? A. By the chairman of the First Church and I think the chairman of the Eighth Church.

Q That is somewhat unusual for a member of one Church to address a business meeting of another church? A. I wouldn't say it was unusual; no sir, it is not. It is not done at every meeting they have, but—

Q Give a precedent that you know of such an action on your part. A. I have known of the then chairman speaking at the Eleventh Church; I have also known of other Christian Scientists talking to various churches in Chicago.

Q Who? Name one? A. Mr. Kimball was one.

Q What is the name of the chairman who invited you to speak? A. I was trying to think of his name.

Q I wish you would. A. I will probably think of it before I finish. Did you know it, Mr. Whipple?

Q No, I don't know it; I didn't know he invited you; I supposed he hadn't. These were members meetings, I understand? A. Members were present.

Q These were members' meetings? A. I couldn't say because I don't know.

Q How did they get together? It wasn't sociable, was it? A. I think this, there were none outside of members of the church present.

Q It was a regular meeting of the Church? A. As to that I cannot say.

A members' meeting? A. I not say because I don't know.

Did you see anything indicating whether it was a members' meeting or not? A. The chairman presided at the meeting.

And what were you told by the chairman as to whether it was a members' meeting? A. That I don't remember.

He invited me to come down and discuss them on that subject.

Did you receive what is known as the Harney telegram? Or did you not? A. No, sir.

Never have seen it? A. No.

Did you ever hear of it being discussed? A. I heard about it being discussed.

From whom did you hear that? I don't remember.

Who was it sent to in Chicago? That I don't know.

Who was the Publication Committee at the time it was sent out? It was sent when?

It was sent along in December, December 22, 1919. A. I think Mr. Harney was.

He was your client, wasn't he? Whether he was at that time I don't say.

r. MORSE. What name is that? r. WHIPPLE. White.

Did he show the letter? A. No.

Can you testify to that possibly? A. I have.

Did he speak of receiving it? I think not.

From whom did you first hear of the Harney telegram? A. I cannot tell you; I cannot remember.

When? A. That I don't remember.

Your memory isn't very good, especially on details? A. Not in matters of that kind because I wasn't particularly interested in it at that time. In my best judgment it was probably about the latter part of February or the first of March that I heard of it.

You knew that the telegram—it may have been in January.

You knew that the telegram recommended the cancellation of subscriptions? A. It is my—well no, I don't know that it recommended the cancellation of subscriptions.

What did you understand? A. I understood the telegram had been sent by Mr. Harney to ask persons to form committees on publication in some states, stating that it might be wise to take up with some of the churches the question of cancelling subscriptions.

Now that is a thing you are much interested in now? A.

But you say you weren't then? At that time I wasn't interested in that telegram.

Were you then interested in the cancellation of subscriptions? A. Yes.

Last January? A. Yes.

Q And have been ever since? A. Yes.

Q Like to see it done? A. Well, I wouldn't want to say that.

Q Were you, or weren't you? Do you urge or recommend the cancellation of subscriptions or not? A. I wouldn't want to say I urge them to cancel them; I think it is a matter for the judgment of each Christian Scientist to determine whether or not they should cancel their subscriptions.

Q Therefore the meetings suggesting or urging the cancellation of subscriptions you wouldn't approve of? A. I think where a church met or a church conference meets they have a right to pass upon that question as a church proposition.

Q And to urge others, correspond with others about it? A. I think they have a right to recommend to their members—I wouldn't want to say.

Q You know, do you not that the Directors are prevented from doing that—to urge or recommend the cancellation? A. I think if I was a Director I wouldn't do it.

Q Then you think they are forbidden by the injunction? A. I cannot say so. I will give you my opinion upon it. I think—

Q Pardon me. I only asked about the Directors. Did you recognize as a lawyer that the Directors were enjoined from urging the cancellation of subscriptions? A. I think that they are enjoined from urging cancellations.

Q Now do you want to be at liberty to urge the cancellation of subscriptions? A. Me?

Q Yes. A. No, sir.

Q You don't care to do that? A. No, sir; I do not.

Q Do you care to do anything with regard to injuring or tending to injure the Publishing Society that the Directors are forbidden to do? A. That would depend upon what you would claim would injure the Publishing Society.

Q If you will pardon me. The question is, Do you want to do something or anything that the Directors are forbidden to do under the injunction—leave out the injury? A. I wouldn't say—

Q Pardon me. Do you? A. I cannot answer that question.

Q Cannot you answer that categorically? A. No, sir.

Q You cannot say Yes, or No, and then explain afterwards? A. I cannot.

Q That is a plain question as to whether you desire or want to do any of the things that are forbidden by the injunction against the Directors and you cannot answer categorically? A. No, sir.

Q Cannot answer Yes, or No, even if you had permission to explain afterwards or modify it? A. I think I can answer that question.

Q I am asking you to answer it

Yes or No. A. I think I do not desire to do so.

Q And therefore an injunction to the same extent and scope of the injunction against the Directors would not interfere with anything you want to do? A. I think it would not.

Q It would not? A. That is, that is my judgment of it. Your judgment of it may not coincide with mine.

Q You think it wouldn't interfere in any way. Then you do not want to do anything which if the Directors did it would violate the injunction, is that correct? A. That is, if I individually were a Director—personally?

Q No. You yourself, just plain, ordinary man that you are, don't want to do anything with regard to this controversy which if done by the Directors would be a violation of the injunction? A. I think that would be a question as to what might be a violation. If filing a suit to remove these Trustees, be a violation of it then of course I would like to do that.

Q The Directors have filed such a suit and so there would be no necessity of that? A. Then it is not a violation of it.

Q Is there anything else you would want to do with regard to holding meetings, passing resolutions, urging or inducing cancellations of subscriptions to the publications of the Publication Society? A. No, there is nothing that I desire to do now.

At this point the Court took a recess until two o'clock.

AFTERNOON SESSION

The Court came in at two o'clock.

Frederick A. Bangs, resumed.

DIRECT EXAMINATION CONTINUED.

Q (By Mr. WHIPPLE) You knew who Harney was when you heard of his telegram? A. No, sir; I did not.

Q When did you hear who Harney was? A. I couldn't tell you, but it was recently, within the last month or so.

Q That was when you heard of the telegram that was sent out suggesting that the Church take up the matter of cancelling subscriptions which you said, I think, may have been in January, you didn't know who Harney was? A. No, sir.

Q Hadn't the slightest idea? A. No, sir.

Q Didn't the person who told you about the telegram tell you who he was? A. I think not.

Q Hadn't you any interest in inquiring who he was? A. I may have had interest, but I think I didn't inquire.

Q And of course never had a suspicion of the significance of that telegram as coming from the committee on publication's private secretary? A. I did not, at that time, no sir.

Q When did you first appreciate the significance? A. I think recently, as I stated.

Q Still you remember that you

heard of that telegram? A. Oh yes, I heard of it.

Q Didn't you know that in the contempt proceedings which were brought against the Directors and was heard before Judge Braley, Harney testified? A. I think I never knew of it.

Q Didn't you read those proceedings? A. I did not.

Q No part of them? A. I couldn't say that. I wouldn't say I read no part of them. I may have read part.

Q You didn't read Harney's part, the fact that he testified that he was Judge Smith's private secretary? A. No sir.

Q You never knew that Harney there attempted to take the responsibility of certain things which lead to the Directors being fined for contempt? A. The name of Harney didn't bring anything to me at the time that I heard it.

Q Now taking up these resolutions for a moment. I call your attention to this one: "Whereas said Manual vests in the Christian Science Board of Directors in Boston, Massachusetts, the ultimate direction and supervision of all properties, agencies, interests, and activities of said Church including the Christian Science Publishing Society, its Trustees and its Publications." You realized what that meant when you read it, didn't you? A. I think I did.

Q You know it was an issue in the pending case in Massachusetts, did you not? A. I didn't realize that it was, at that time. I don't know. I wouldn't know without reading the bill and also reading it in conjunction.

Q Hadn't you read the injunction? A. No. Conjunction, I said.

Q You have read the injunction? A. No sir.

Q Have you ever read the bill that was filed against the Directors. A. Yes, I have read the bill when it was first set out.

Q You didn't know at that time when you first read the bill that it involved the question as to whether the Directors under the Manual had a right to control the activities of the Publishing Society? You didn't know that was an issue in the bill? A. I wouldn't say that.

Q Perhaps you wouldn't want to, but won't you? A. No.

Q You won't say whether you knew it or not? A. I cannot tell, you know?

Q You cannot tell what you knew then? A. No, sir.

Q Do you know now that that bill involves the determination of the question as to whether the Directors had control of the Trustees and the affairs of the Publishing Society? A. As I understand the bill in *Eustace v. Dickey* it involves the issue as to whether or not Mr. Rowlands was properly removed by the Board of Directors.

Q And that is all? A. That is my understanding.

Q And it did not involve the question of the authority of the Directors over the Trustees? A. It may.

Q What is your opinion about it, as a lawyer? What is your view? A. I cannot give you my opinion without taking the bill and going over it and also the testimony.

Q You did not know when these resolutions were passed, in which it says, "Whereas the Manual vests in the Directors the supervision of all properties including the Christian Science Publishing Society its Trustees and its publications,"—you didn't realize or understand that it was at all involved in the Massachusetts suit? A. I don't think I gave it any thought at that time, as to whether it did or not.

Q If you had given it thought would you have known it? A. I don't know.

Q That is that blank negation that we are up against, isn't it, that you don't know what you thought—can't remember what you thought? A. I don't think that is a fair question.

Q Isn't it? A. I think not.

Q Haven't you, when we have come to the vital point, said you couldn't remember? Take this; "Whereas the Trustees of the Christian Science Publishing Society are, and each of them is, guilty of flagrant disobedience to said Manual in refusing to recognize the aforesaid authority of said Board of Directors over said Christian Science Publishing Society, its Trustees and publications," in that they refuse to recognize the authorities—in what way had they refused to recognize the authority over them of the Directors, that you know of? A. In many ways.

Q Name some. Name them all. A. In the first place they have stated that they are not under the jurisdiction of the Board of Directors and the provision in the Manual which says that the Board of Directors may in their discretion remove them.

Q Where did they state that? A. I will have to find it for you.

Q No. Where did the Trustees ever state that to your knowledge—what you have just said? A. I cannot tell you.

Q You cannot state where they have ever stated it? A. No.

Q Won't you try to tell us where the Trustees have ever stated what you just said they had stated, that they were not under the authority of the Directors, etc. Where have they ever stated that? A. The bill itself would indicate it.

Q Yes, that is it. Where else, except in the bill? A. It has been reported to me that that was the position that they took.

Q Where in writing have you ever seen any statement of the Trustees to that effect, except in the bill? A. I don't remember now, any writing.

Q Then you got from the bill itself that the Trustees do not recognize the authority of the Directors over them and the Publishing Society? A. I think it was in the bill—and the fact that they were seeking to prevent the Board of Directors from removing Mr. Rowlands.

Q That was the injunction, wasn't it? A. Yes, sir.

Q So that from the bill and the application for the injunction you learned that the Trustees— A. I did learn that they had declined to recognize the authority—I did learn it from that and also from other sources.

Q Will you bring forward any writing on the part of the Trustees, or any statement on the part of the Trustees except in connection with the bill? A. I have none.

Q Now who told you that they had repudiated the authority of the Directors, except so far as they stated it in the bill? A. My recollection is that I was told it by Mr. Barlow, and that I was also told it by one of the Directors.

Q Prior to the filing of the bill? A. Prior to the filing of the bill.

Q Tell us which Director said it? A. I cannot tell you because I don't remember which one said it.

Q So your authority for that statement outside of what was in the bill, was from one of the Directors, whose name you cannot tell us. A. Yes sir.

Q What did he say—the man whose name you can't remember? A. That was the substance of it, that they were disobedient to the desire of the Board of Directors that Mr. Rowlands be removed.

Q I see. That is the same thing that was in the bill. A. Is it?

Q Isn't it? A. I cannot tell you.

Q I thought you said you learned from the bill that they were disobedient to the wish of the Board of Directors that Mr. Rowlands be removed? A. I did.

Q You learned the same thing from the statement of one of the Board of Directors whose name you cannot remember before the bill was filed? A. Yes, sir.

Q That is a statement connected with the bill—a statement of the Trustees' position in the bill? A. Yes, made prior to March 25th.

Q What did Mr. Barlow tell you? A. Mr. Barlow told me that the Board of Directors of the Mother Church required the Trustees to resign; that they weren't in accord with the Board of Directors; that they were disobedient to the Manual; that the Board of Directors couldn't get matters published in the periodicals which it was the desire of the Board to have because the Trustees had refused to do so; that they had been negotiating endeavoring to arrive at a settlement for quite a period of time.

Q When did Barlow tell you that? A. I think it was early in the year 1919, it may have been the latter part of 1918.

Q You had heard the Court state that he wouldn't take any testimony prior to the filing of the bill. Of course, I meant my question with regard to that? A. You didn't so limit it.

Q I know I didn't. I know I didn't. You put it by all right. A. I didn't intend to put anything by, Mr. Whipple.

Q You know now that what I am inquiring about is within the period his Honor said you might testify about. Since then who has told you of any disobedience on the part of the Board of Trustees, other than their refusal to recognize that the Directors had any authority over the Publishing Society? A. I now remember of no one.

Q Now do you not know that the bill involves that very question, as to whether the Directors had sufficient over the Publishing Society and the Publishing Society Trustees to remove them, or compel them to be obedient to their will? A. I understood the question was whether the Board of Directors had power to remove Mr. Rowlands—that that was the issue in the bill.

Q Yes, and that it had authority over the Trustees? A. I would have to examine the bill.

Q Will you examine the bill? Haven't you a copy before you? A. I have a copy of it.

Q Just take it and look at it and see whether that issue was not involved? A. Do you wish me to read it?

Q Read it, or think it, just as you please. I have no direction except to ask you to state to his Honor whether you knew enough to know when you were consulted by the Directors before the bill was filed and when you were here after it was filed, whether it involved that issue that I have referred to. A. Will you read the question, please?

Q It was explaining the question I have already put, that is whether the issue is involved in the will.

MR. MORSE: Is there any limit to this inquiry?

THE COURT: I am wondering somewhat where this cross examination is leading us. I am not intending, as you know, to pass on the particular questions of this suit or particular questions involved in this suit.

MR. WHIPPLE: Will your Honor pardon me if I state my view of it? It is this point: If the witness knew that the things which the Board of Directors were forbidden to do were exactly these resolutions and he indulged in them or the promotion of them, or assisted in their being passed, then he ought to be enjoined from doing what he knew the Directors were enjoined from doing.

THE COURT: Of course you have in mind that my day is this week.

MR. MORSE: He has at no time done anything by consultation, advice or suggestion directly or indirectly.

THE COURT: I understand.

MR. WHIPPLE: Your Honor will remember he testified this morning—

THE COURT: I remember what he

testified this morning and the other day as to calling these meetings and the part he took in them. That was what I was about to say.

MR. WHIPPLE: This morning I thought he modified what he said the other day. He said he advised the Directors.

THE COURT: I don't think so. I do not think his testimony was changed in the least.

MR. WHIPPLE: Very likely I am mistaken. He spoke of consultations and as to advice which he gave that the Directors didn't ask for.

THE COURT: I meant as to these resolutions.

MR. WHIPPLE: That wasn't changed at all, but I was bringing out that he advised the Directors with regard to the bill in *Eustace v. Harney*.

THE COURT: That ought not to be gone into further—no further than is necessary to meet this question.

MR. WHIPPLE: I quite understand the situation, if your Honor please. I shall be glad to be checked if I go beyond what your Honor feels is the issue that is to be determined. In view of your Honor's intimation I shall waive that question as to his opinion as to what is involved in the bill, because after all the bill is before your Honor and your Honor would know what a member of the bar or a lawyer ought to understand with regard to its issues.

Q I want to direct your attention to one more recital. "Whereas the effect of said disobedience of said Trustees and of said injunction is such that said periodicals are no longer the organs of said church, the Directors of said church having at present no voice in said publications"—that was your claim, was it, that by reason of the Trustees having appealed to the Court in the violation of a duty which you claimed they owed to the Directors, that in consequence of that the publications of the Publishing Society were no longer the official organs of the Church? A. I believe—

Q Pardon me. That was your claim at the time these resolutions were passed? A. I don't think I made any claim at that time.

Q Was that your idea or thought or belief— A. My—

Q I ask if it was? A. I cannot answer it Yes or No.

Q Very well, I waive it, if you say you can't answer it Yes or No. "Whereas it is the duty of members of The Mother Church to refuse to subscribe for or read or circulate periodicals so issued by the Publishing Society until such periodicals are published in accordance with the Manual, Now therefore, be it resolved" etc. Was that a correct statement of your belief with regard to the publications of the Publishing Society? A. That is a correct statement of my belief in regard to it.

Q And was it at the time it was adopted? A. Yes, it was.

Q And you therefore, on the basis of it, desired these churches in Illinois to refuse to subscribe, did you not? A. I wouldn't say that it was my desire, and yet I guess it was.

MR. WHIPPLE: All right; that is all.

MR. KRAUTHOFF: If your Honor please, may I examine the witness?

THE COURT: I don't think, Mr. Krauthoff I will let any one examine the witness other than Mr. Whipple and his attorney.

MR. KRAUTHOFF: Your Honor will remember we have a pending injunction to enjoin the prosecution of this suit.

THE COURT: You have nothing to do with this suit at all. I have allowed you to intervene as a friend of the Court many times, but I think I shall not allow these witnesses to be examined except by their counsel and Mr. Whipple.

MR. KRAUTHOFF: We have a pending application—

THE COURT: This is a single narrow question. I am not interested in any branch of the case at present—I am interested but I am going to confine myself to this case.

MR. KRAUTHOFF: I suppose we will have opportunity to bring our application for injunction?

THE COURT: Not in this case.

MR. KRAUTHOFF: The injunction relates to the prosecution of this case, because this case is subject to the other case.

THE COURT: You should have brought it up before we began. At all events I am not going to hear it.

MR. KRAUTHOFF: When this case began I presented my application for an injunction and you said I would have opportunity to be heard. I cannot be heard without producing evidence on which the application is based. I have no idea of examining these witnesses at length. I want to prove that what he has done he did as a member of The Mother Church and what he understood the Mother Church required him to do for the purpose of showing that particular issue in this case. The particular issue in this case is the issue that I tendered to this Court on the 31st of March in the suit brought eight days before this suit was brought. That being true, we have the right to join in the prosecution of this suit.

THE COURT: Does anybody deny that right?

MR. KRAUTHOFF: That is all I care to prove by this witness.

THE COURT: Very well, you may ask that question and save time.

Q (By Mr. Krauthoff) I will ask you, Mr. Bangs, if in what you have done as you have testified, you were acting as a member of the Mother Church? A. Yes.

Q Upon your understanding of what the Manual of The Mother

Church required you to do as such?
A. Yes.

MR. WHIPPLE: If your Honor please, I will ask your indulgence for a moment on a matter I have overlooked.

Q (By Mr. Whipple) Do you know Henry I. Armstrong? A. Yes.

Q Where? A. In Chicago.

Q Are you well acquainted with him? A. I know Mr. Armstrong, I can hardly say I am well acquainted with him.

Q And is his wife Mabel B. Armstrong? A. She is.

Q A member of a Committee with you? A. Yes.

Q Have you met Mr. Armstrong and Mrs. Armstrong together? A. I think not.

Q Has he been present any time when the Committee was to meet? A. No, sir.

Q Did your committee, or any member of it, receive telegrams from one of the defendants, Richard J. Davis, or communications of any sort? A. None that I know of.

Q Well, weren't there communications shown to you? A. No, sir.

Q Do you remember of your committee having communications from anybody on the subject on account of which they were appointed?

A Oh, yes.

Q Now, from whom? Tell us all that you remember. A. It would be impossible for me to give you the names of all of them.

Q Give us all you remember. A. We heard from Mr. Hedstrom, we heard from Mrs. Wilson.

Q I mean, for the moment, out of Chicago? A. I think we heard from Mr. Gale, in California, and some one I think in South Dakota.

Q Is that all? A. And a member of the Committee from Iowa. Now that is all I remember of, there may have been others out of town.

Q Anyone from Boston? A. Except the telegrams which I spoke to you about on my other examination, from Mr. Dawson and—

Q I will ask you whether you did not have the subject of this communicated to you as a request for information by Richard J. Davis here in Boston, on March 20 or since then?

"Can you give me general impression attitude of Chicago churches at present time toward new developments. As compared all other big cities seemingly very apathetic. Do you think Chicago reliably informed. Believe churches should have representatives here to watch situation for themselves."

"As compared all other big cities Chicago seemingly apathetic." Did you see any communication like that?

A I have no recollection of any such communication.

Q This was prior to your being appointed with Mrs. Armstrong as a committee? A. What is the date of it?

Q This is March 20.—a date prior to that? A. Yes, sir.

Q Well, now, weren't you informed of communications from Boston to the effect that the Chicago churches as compared with all other big cities are seemingly very apathetic? A. I have no recollection of it.

Q Will you deny it? A. I don't believe it would be possible for it to have been presented without my remembering it.

Q Are you positive enough— A. I can't be positive.

Q —so that under oath you can deny it? A. I can't remember; it is impossible for me to say positively that it is not, but my best judgment is that it was not done.

Q But it is impossible for you to deny that substantially that thing was sent—was known to have been received as a message from Davis here in Boston—namely, that the Chicago churches as compared with other big cities were seemingly very apathetic? A I can only answer that as I have stated.

Q In point of fact, they were up to that time, and up to the time of Mr. Neal's visit, weren't they? A. Apathetic?

Q Yes. A. I had not thought so.

Q They had not taken any action, had they? A. I thought they had.

Q Had taken action? A. Yes.

Q Passed resolutions? A. Yes.

Q Prior to March 20? A. Yes.

Q Where, which churches? A. Quite a number of churches had passed resolutions prior to that time.

Q Name them. Chicago churches? Name them—prior to March 20.

A The only one I can speak authoritatively upon is Fifteenth Church, the one that I belong to. I heard that others had done so.

Q Had the Fifteenth passed resolutions? A. Yes.

Q Cancelling subscriptions? A. Yes, sir.

Q I thought you said you had introduced a resolution and it had not been adopted? A. That is true.

Q Prior to March 20? A. Yes, sir.

Q When was that, that they had refused to adopt? A. That I don't know the date of it. Let me see, I think I have it.

Q I wish you would look for it and see. A. (Examining memoranda) I was not present at the time that it was adopted, so that I cannot—

Q You were present at the time they refused to pass a resolution?

A Yes, sir; I was.

Q When was that? A. That was early in January, 1920.

Q Now, when did they pass any resolution? A. That was March 30, 1920.

Q March 30? A. Yes.

Q The communication I spoke of was March 20. A. That was March 20.

Q Now, will you name a church in Chicago that had passed resolutions as to cancelling subscriptions prior

to March 20, when this condition of apathy was commented upon? A. It would be impossible for me to name them because I was not present at their meetings.

Q Name one that you had heard of and that you can conscientiously state to his Honor that you had heard had cancelled subscriptions prior to March 20. A. I don't believe that I can, Mr. Whipple.

Q Very well. Then would you say that as compared with others the Chicago churches prior to March 20 had not been apathetic? A. I don't think they were.

Q Well, they passed no resolutions had they, that you can remember? A. I can't remember because I was not present at their meetings.

Q And your own church had refused to pass a resolution? A. No.

Q Oh, yes; one in January? A. The chairman ruled it out of order.

Q Oh, yes. Well, they didn't pass it, did they? A. No, it was not passed.

Mr. WHIPPLE. If I may trespass on your Honor's indulgence for a moment, I would like to have a copy, or what purports to be a copy of the telegram from Richard J. Davis to Henry J. Armstrong, who is testified to be the husband of Mabel Armstrong, the lady who a short time thereafter was appointed a member of the committee of which this gentleman was chairman. I will have it marked now merely for identification.

Mr. WHITE. I will look it up and see if I can find a copy of it.

Mr. WHIPPLE. All right; I wish you would; and if in the archives of your committee you have the original I would be glad to have it. I will have this marked for identification.

(Copy of telegram, March 20, 1920, Richard J. Davis to Henry J. Armstrong, is marked "Exhibit A for Identification.")

Q Are you very sure that the action of the Fifteenth Church was on March 30? A. Well, that is what this says. I may be in error. But it says it was at a meeting of the members of Fifteenth Church of Christ, Scientist, held March 30, 1920.

Q You can't name a church which acted before your own church acted, can you? A. No, sir.

The COURT. Are there any questions on redirect?

Mr. MORSE. If your Honor please, I desire to ask one question.

Re-Direct Examination

Q (By Mr. Morse) Colonel Bangs, in view of the long cross-examination which you have had concerning many conditions under which you would act supposing they would arise, I want to ask you this one question, which was asked by me when you were on the witness stand before, bearing upon the question as to what you propose to do in the future; and, in view of the examination of what has taken place since, I will read you

question that was put by the rt:

Q. Do you mean that you intend confine your activities so far as the face case is concerned to consultation with the Attorney-General and to owing his direction?"

nd your answer was: Yes, or bringing such other proings as may properly be brought." Does that state what you intend to in the future correctly? A. Yes, sir. r. MORSE. That is all.

he WITNESS. If I may, there is correction I would like to make, he court please.

he COURT. You may do so. he WITNESS. That is in reference ny acting for The Mother Church counsel. The first employment ch I think occurred was along ut the 31st of March, 1920, and t was the Rowlands matter, if I ember correctly. The next one in August, which related only the Laramie estate—August, 1919. l the next one was in the Clark ter, which was in January, 1920,— dates of which I did not remember n my former examination, and I ted to make that statement now.

Re-Cross-Examination

(By Mr. Whipple) If you will don me, were you retained in the vlands matter on March 31, 1919? It was either March 31 or the 1st April.

1919? A. 1919.

You said 1920. A. Did I? Then t was a slip of the tongue.

I so understood you. It was lly in 1919? A. Oh, yes, 1919.

That was before you had gone k to Chicago on the occasion when bill was filed? A. No; it was r my return to Chicago.

How long after? A. Well, rtly after; I don't remember the e that I arrived in Chicago.

By letter? A. Yes, sir.

Have you that letter? A. Yes,

Produce it, please. If you will roduce that cash account, the ney paid and received, I should e to have it marked as an exhibit, ough it is less than what I asked

Now there was a later investil on made in regard to Mr. Rowds?

Yes, sir.

But this is the first one? A. it is the first one.

r. WHIPPLE. I would like to of- this, if your Honor please, unless I think it will take up too much of time.

A letter, C. Augustus Norwood to derick A. Bangs, dated Boston, ch 31, 1919, is marked "Exhibit and is copied into the record as ow&)"

Exhibit 4.

"236 Huntington Avenue, Boston, Massachusetts, March 31, 1919. derick A. Bangs, Esq., 'ret National Bank Building,

Chicago, Illinois.

Dear Mr. Bangs:

It may be worth while for us to know why Mr. Rowlands is claiming Picayune, Mississippi, as his legal residence, and therefore I am directed to ask you to give me such evidence as you can find as to when he left Chicago. For instance, when did he last vote in Chicago, pay a personal tax there, etc., if you can obtain such evidence.

Sincerely yours,

C. Augustus Norwood.

(Stamped "Apr. 2 Rec'd")

Q And you accepted that employ- ment? A. Yes, sir.

Mr. WHIPPLE. (To Mr. Morse) Have you the cash account?

Mr. MORSE. I will find it; I haven't it before me.

Mr. WHIPPLE. Very well. Now let me have the reply to that, or the copy of it.

The WITNESS. I haven't the origi- nal, of course.

Mr. WHIPPLE. I would like the original if the directors have it here. Mr. Dane, have you the original of that letter—or the clerk?

Mr. DANE. I would say, Mr. Whip- ple, the original is probably in Mr. Norwood's files.

Mr. WHIPPLE. Well, Mr. Norwood's office is 236 Huntington Avenue, which is part of the directors' suite, isn't it?

Mr. DANE. Yes.

Mr. WHIPPLE. I mean, Mr. Nor- wood is right in the directors' office. Do I understand you haven't it here?

The WITNESS. I am looking for the copy.

Mr. DANE. No. The original is not here.

Mr. WHIPPLE. Would you mind having it in the morning—the origi- nals of all the correspondence with the directors or with Mr. Norwood, with Mr. Bangs—or correspondence with Judge Smith, if any took place?

The WITNESS. Then you don't want my copy?

Mr. WHIPPLE. Yes; I would like your copy in the meantime. I would again suggest, Colonel Bangs, that perhaps it would facilitate matters if you took your papers on to the witness stand where you could examine them.

The WITNESS. I don't find any copy of the reply.

Mr. WHIPPLE. You mean you haven't it here? I will take all the correspondence that you have, either with the directors or with Mr. Norwood, or with Judge Smith, if you please. I would suggest that you take it to the witness stand with you and then you can there examine it.

The WITNESS. All right. I have it.

Mr. WHIPPLE. You have it—all right. I would like the next letter in chronology on this subject; I assume it would be your report to Mr. Norwood or to the directors.

(A copy of a letter dated April 5, 1919, addressed to C. Augustus Nor-

wood, Boston, Massachusetts, is marked "Exhibit 5," and is copied into the record as follows:)

Exhibit 5.

"April 5, 1919.

Mr. C. Augustus Norwood, 236 Huntington Avenue, Boston, Massachusetts.

My dear Mr. Norwood:

I have had some difficulty in getting any information in reference to Mr. Rowlands. I have, however, learned that he appears in the Chicago tele- phone directory of 1919 as follows:

'Rowlands Lamont Ofc 332 S. Mich Av. Harrison 6194'

and appears in the Chicago City Direc- tors of 1917 as follows:

'Rowlands Lamont v Pres C A Goodyear lumber co 1707, 332 S Mich av h 33 Bellevue pl.'

that he is registered as a voter at the address 33 Bellevue Place. He left Chicago in August, 1917, to take up his abode in Boston, and in November, 1917, wrote to Second Church here for a letter, stating that he desired to join a Boston church; and I am in- formed that he did so in 1918. I do not know the exact date, but expect to get it soon. Since his going he sent.—I think in November, 1917,— \$100 as contribution to Second Church.

I called the number Harrison 6194 on the telephone, and the young lady would not give me any information as to Mr. Rowlands, except that he was in Boston, and I could reach him there. I expect some further infor- mation, and as soon as I receive it will communicate it to you.

I learn that Mr. Rowlands is today in Chicago.

Sincerely yours

Q I would like the next letter. A. Which one?

Q The next in chronology. I want all the letters that passed with re- gard to your employment as counsel for the directors in this matter, and in the order of chronology.

Mr. MORSE. Does your Honor think all that is competent and mate- rial? I don't want to object if your Honor thinks it is.

The COURT. I really cannot tell whether it is or not at this time; it may be.

Mr. WHIPPLE. I will offer this—

Mr. MORSE. I think there ought to be something definite in view.

The COURT. I suppose you haven't anything particular in mind, but the expectation that something may show up.

Mr. WHIPPLE. I will offer the sug- gestion, if your Honor please, if we can have the privilege of going over these after adjournment this evening—

The COURT. Any objection to that? The WITNESS. No, not at all.

Mr. MORSE. No objection.

Mr. WHIPPLE. —we will save time.

The COURT. Any objection? Mr. Bangs says he has no objection.

Mr. MORSE. So far as I know there is no objection.

The COURT. You can have the opportunity to examine and see what you can find.

Mr. WHIPPLE. And then recall—

The COURT. Colonel Bangs tomorrow morning.

Mr. WHIPPLE. —Colonel Bangs— if we need to recall him. I want it clearly understood that we shall have access to all the correspondence that passed between Colonel Bangs or the directors, or any of their attorneys, or any other persons in Boston, in connection therewith. You see, there is Judge Smith and Mr. Norwood and the directors, and there is correspondence with Governor Bates, who had become their counsel, and different members of his office, and I desire the whole correspondence, and I understand you will make it accessible.

The WITNESS. As far as I am concerned.

Mr. MORSE. We won't agree to that, if your Honor please, and we can't agree to that.

Mr. WHIPPLE. Well, all the correspondence that he has. Why not?

The COURT. What is your objection, other than that this is a fishing expedition?

Mr. MORSE. What is that?

The COURT. What is your objection other than that this is a fishing expedition?

Mr. MORSE. Well, I don't know that there is any objection. Of course it is a fishing expedition.

The COURT. Manifestly, of course.

Mr. WHIPPLE. It is the season of the year for that.

Mr. MORSE. And just how far we ought to participate in the expedition we do not know. So far as I know there is nothing, but it is a pretty broad statement and one that we cannot bind other parties by.

The COURT. I understand; but this only concerns Mr. Bangs, and Mr. Bangs is a lawyer, and he says he has no personal objection to it.

Mr. MORSE. I don't think we have any.

The COURT. I assume he knows what he is talking about. You may have the papers such as Mr. Bangs can give you.

Q When you were here in March of 1919 were you informed by the directors, or any one in their behalf, that the trustees had suggested to the directors that this question as to authority over the publications and the business of the Publishing Society should be submitted to the court for the court's determination in what was called a friendly suit? A. I don't believe I ever heard of a friendly suit, Mr. Whipple, in this connection.

Q Then if it was a fact that the trustees had offered to the directors, before any litigation was instituted at all, to test that question of legal authority over the affairs of the Publish-

ing Society by a friendly suit, that should be brought either by the directors or the trustees, to test that legal question and interpret the deed of trust, you were not informed of it?

Mr. MORSE. I object to it.

A If I was I don't remember it.

The COURT. No, I think he may answer.

Q What is that? A. I think not.

Q And you never have heard of it, you never have heard that offer was made? A. I think the first I heard of it was from you.

Q And, so far as you know, no one in the field, of course, has ever heard of that? A. That I don't know.

Q Well, did any one in the field ever tell you of any such thing as that? A. No, sir.

Mr. WHIPPLE. That is all.

Mr. MORSE. That is all.

JAMES A. HEMINGWAY, Sworn

Q (By Mr. Morse) What is your full name? A. James A. Hemingway.

Q Where do you live, Mr. Hemingway? A. Chicago.

Q And what is your business or profession or occupation? A. I am secretary of one of the State Banks in Chicago.

Q And are you a member of the bar also? A. I was admitted to the bar, yes, but not in active practise.

Q Are you a Christian Scientist? A. Well, I hope I am; I am trying to be.

Q And what have been your activities in Christian Science, as concerning any positions? A. Well, I have been interested in the movement for about 22 years, and, if you mean activity in church work—do you, Mr. Morse?

Q Yes, and what positions you may have held. A. I have held the position of usher, treasurer, I was a trustee, a member of the board of directors, occupied the position of First Reader, and have been again on the board, and an usher, and a Sunday School teacher.

Q And are you a member of any churches in Chicago? A. I am a member of Second Church of Christ, Scientist, in Chicago, and of The Mother Church in Boston.

Q When you say you were on the board of directors what do you mean by that—in what church? A. In Second Church.

Q Now, were you present at any meetings when these resolutions were passed which we have read here and introduced in evidence?

A I believe the only resolutions that have been read here were the ones that were adopted at the conference in First Church on April 2, if I remember correctly. I was present there then, yes.

Q And did you vote for the resolutions?

Q The COURT. April what?

The WITNESS. April 2.

A I did, yes.

Q Were you appointed one of the

committee to act upon those resolutions? A. Yes, sir.

Q And with Colonel Bangs and the other names that have been mentioned here? A. Yes, sir.

Q And then what did you do in consequence of your appointment as a member of the committee? A. The committee instructed Colonel Bangs and me to come to Boston to interview the Attorney-General, and we came and did interview him.

Q In anything that you have done, or action that you have taken, either individually or as a committee man, have you in any way acted under the advice, or suggestion of the Board of Directors, or either of them, directly or indirectly, so far as you know?

A No, sir.

Q And what you have done, you have done because of your belief as a Christian Scientist? A. Yes, sir.

Q And what is it your purpose to do in the future with reference to these matters, Mr. Hemingway? A. We intend, so far as we are permitted to do so, to continue until the spirit of the resolution has been fully carried out, that directed us to try to have the Attorney-General take action in the matter, and also to take such other or further legal or equitable action as might be deemed advisable.

Q And is that all that you propose to do? A. That is all I propose to do, yes, sir.

Mr. MORSE. Your witness.

Cross-Examination

Q (By Mr. Whipple) Mr. Hemingway, have you done anything in this matter which, so far as you have any belief about it, the Directors would not approve? A. I don't know whether they approve of what I have done; I have never asked them.

Q You see that was not my question. Have you done anything which you believe that, if you asked them, they would not approve? A. I don't believe I understand your question; I don't know whether they would approve or not.

Q Well, I don't ask whether they would or not. I ask whether you have done anything which you believe that, if you asked them, they would not approve. It is your own mind that I am asking about. A. I would like to say that in the matter—

Q No, pardon me; will you answer that? A. I can't answer the question Yes or No. You will have to let me explain the basis of my action.

Q Well, if you will pardon me, I am not asking for your explanation, I am asking the question. A. Well, I cannot—

Q Don't you understand the question? A. Not sufficiently to answer.

Q I am asking you if you have done anything in these matters which you do not think the directors, if you had asked them, would approve? A. I don't know what they would think if I asked them.

Q I didn't ask what they think, I asked what you think they would do. A. Well, I don't know what they think, nor I don't know what they would do.

Q I ask you what you think they would do. A. They wouldn't do anything, because they have no right to do anything under the circumstances.

Q So you think they would not approve? A. I know they would not approve or disapprove.

Q I see. So that you think you haven't done anything that the directors would either approve or disapprove? A. I don't know whether they would approve or disapprove of anything I have done.

Q Why do you think they wouldn't approve or disapprove? A. Because they dare not; under the Manual they have no right to.

Q Not affected by the injunction in any way, is it? A. I haven't in thought the injunction; the Manual provides that each church shall have its own form of government; it provides that no other church and no individual shall interfere in its affairs, and I have found that the directors live up to the letter as well as the spirit of the By-Laws in that respect.

Q So that your theory is that it is none of the directors' business, so to speak, whether the other churches cancel the subscriptions or not? A. I didn't say that.

Q I thought you said that they wouldn't interfere because the Manual provides that they should not? A. My thought is that they would not interfere.

Q Does the Manual provide that the directors shall not interfere in the question as to what the branch churches shall do with reference to subscriptions to the publication society? A. The Manual does not provide that they shall do anything or not do anything regarding the publications, so far as the branch churches are concerned.

Q And therefore you understand they have no authority over them?

A. I understand they have no control over any act that the branch church may see fit to take.

Q And no authority over the branch churches? A. No authority over the branch church.

Q And that is why you have not spoken to them about it, is it—that you haven't spoken to the Directors about it? A. Well, I don't know; I didn't speak to them about it because I didn't feel that there was any necessity for it.

Q And you didn't think there was any necessity for it because you say that as to what the branch churches shall do with reference to cancelling or not cancelling, and subscribing or not subscribing, for the publications of the Publishing Society, the directors have no authority— A. Will you read that?

Q —over the branch church? A. Is that a question or a statement?

Q That is a question. A. Will you read that, please?

(The question is read by the stenographer.)

A. Well, I think that has been answered by me before, Mr. Whipple.

Q Well, I want to be sure that that is your answer. A. The answer that I gave before I think stands; I have no desire to change it.

Q That is, that the directors have no authority over the question of whether the branch churches shall subscribe or shall not subscribe? A. I would let the Manual answer that; that would be the best evidence.

Q No; I am asking what you understand the Manual to state.

A. I don't want to interpret the Manual; I will let it interpret itself.

Q Then how can you stand by your answer that you gave a moment ago, that they did not have authority—the Directors did not have authority in that matter? A. Did I use the word "authority," Mr. Whipple?

Q You assented to the question—answered the question which I put.

A. I said I think that the directors would not interfere because the Manual provides there should be no interference.

Q Do you think under the Manual they have authority to interfere?

A. Well, that is something I am not going to pass upon.

Q Well, you gave that as a reason why you didn't consult the directors, because you thought it was a matter regarding which they did not have authority? A. When you asked me the question, the question of consulting the directors had not come up. It is not customary for branch churches to consult the directors before taking action.

Q Now it has come up, and I ask you whether the reason why you did not consult the directors was because you understood they had no authority on the question as to whether branch churches should subscribe for or cancel their subscriptions for publications?

A. Well, I don't know that I have thought very much about whether that was the only reason or not.

Q I will ask you to think of it, because it may be of importance. Think of it now. Was that a reason why you didn't talk with the directors about it? A. Well, as a rule I have refrained from troubling the directors about matters concerning the branch churches I have always felt it was our duty to work out our problems without bothering them.

Q Well, was there any other reason for not talking with them about it except that you thought they were without authority?

A. I have stated just now the reason.

Q Well, any other? All I am asking is, was there any other?

A. I don't think of any other reason.

Q You don't think of any other, that is, because they hadn't authority? A. You bring in that word "authority". I don't think I used it.

Q Well, I wish you would answer it. Was it because you thought they hadn't authority in the matter? A. I didn't think anything about the authority.

Q Have you talked with the Directors, or any of them, since you have been here on your mission? A. The first time, as stated by Col. Bangs, when I called upon the Board we talked with them.

Q Have you talked with Judge Smith? A. I spoke to him a couple of times, yes.

Q Where? A. In the court room.

Q Where else? A. And I was invited to his house to luncheon on the Saturday that we were here, on the way out to Mrs. Eddy's home. I called at his home.

Q Did he invite you to luncheon? A. Yes, sir.

Q And who else? When else? A. That was the only time.

Q That was all? Who else was present? A. Mrs. Smith and her daughter, I believe—their daughter, rather.

Q Was Col. Bangs there? A. Col. Bangs was not there, no.

Q Did you talk with Judge Smith anything about the state of things?

A. I didn't have any opportunity.

Q Well, did you? A. I did not, no.

Q You didn't talk with him? A. No.

Q You didn't mention this pending controversy, which I assume you think is of great importance to the Christian Science faith? A. I don't think that the question was discussed.

Q Was it mentioned? A. I don't recall of its having been mentioned.

Q Will you say that it was not—will you deny it? A. I say that I don't remember that it was mentioned.

Q Well, why didn't you talk with Judge Smith about it? A. Why didn't I? Because I didn't.

Q Why not? A. I didn't know that he would want me to.

Q Why did you think he might not want you to? A. Well, I recognized that he was under the injunction, and he is not a man of many words under any circumstances, and I did not feel that I wanted to embarrass him by discussing something that I felt that he would not feel at liberty to discuss.

Q Why, what did you think he was not at liberty to discuss? A. Well, I understood that they would not be at liberty to discuss this case on account of being under an injunction.

Q That is, that they could not speak about the case of Eustace v. Dickey? Is that what you understood? A. I was under that impression, that they would not care to discuss it.

Q That they were enjoined from discussing it, speaking of it? A. No, sir.

Q What? A. No.

Q You knew you were not enjoined? A. No, I was not enjoined.

Q You were not enjoined? A. No.

Q So that you thought you could do the things that they could not do? A. No, sir.

Q What? A. No, sir.

Q Did you think you were under the same restriction as to the things that you could do, or must refrain from doing, that the Directors were under? A. I hadn't thought anything about that.

Q You had heard of statements being made publicly at church meetings that the Directors were tied up by the injunction and could not ask the churches to cancel, but that the Speaker was not so tied up and could do it? A. I didn't hear any such statement made, Mr. Whipple.

Q You never have heard any such statement made, or heard of it being made? A. Never heard of it until now.

Q Never heard of it? A. No, sir.

Q Why, you heard Col. Bangs say that he had heard of it being made, didn't you? A. No, sir, I did not.

Q Didn't you? A. No, sir.

Q At all events, you never heard of it? A. Never heard of it.

Q Now, when you talked with the Directors, how long were you talking with them? A. Well, that I couldn't say.

Q Did you mention what your mission was here? A. I think we referred to our mission, yes.

Q What did you say; just tell us. A. I think we referred to the fact that we had come here to interview the Attorney-General.

Q What did the Directors, or any of them, say to that? A. The only thing I recollect was their asking us whether we had engaged counsel; and if so, whom.

Q Did you tell them? A. Yes, sir.

Q That is, you had already engaged counsel? A. Yes, sir.

Q To go before the Attorney-General? A. Yes, sir.

Q Is that right? Nothing else was said? A. I don't recall. Yes—yes, there was one thing said. The question was asked if we remembered where or under what circumstances Mrs. Eddy made a certain statement relating to the Journal. I think that was the only thing I recall.

Q Did you speak at all of the pending litigation, Eustace v. Dickey? A. I don't recall that it was referred to, Mr. Whipple.

Q Why not? A. Because I don't think it was referred to.

Q Well, why didn't you speak of it? A. I didn't have any occasion to; it was not my mission.

Q Why, it was a matter of considerable interest to Christian Scientists, wasn't it? A. The thing that interested—

Q No; pardon me. Wasn't that? A. It is of considerable interest, yes.

Q And you were in the presence of the highest dignitaries of the church, were you not? A. I believe I was, yes.

Q Yes, that is right. And you never mentioned to them this matter of surpassing interest? A. I didn't think there was anything I could tell them that they didn't already know about.

Q Well, I didn't ask you that. I should presume that was so. But you might have still spoken of it? A. But I did not.

Q If you hadn't been afraid to. A. I was not afraid.

Q You were not afraid to? A. No, sir.

Q But it was just a natural aversion to speak of it? A. There was no occasion to refer to it.

Q It was either a natural or an unnatural aversion to speak of it? A. We were only interested in the project that we came to Boston for.

Q Were you present at a meeting of the Second Church in Chicago when the question of discontinuance of subscriptions was discussed? A. I was; yes, sir.

Q Did you advocate the discontinuance? A. I did not.

Q Did you speak in favor of it? A. No, sir.

Q Didn't you speak in favor of it and say this,—that you saw that there were some friends of the Trustees present and supposed they would report to the Trustees, and you hoped they would? A. That statement was not made in connection with any advocacy on my part of the cancellation of subscriptions.

Q Did you make that statement? A. What statement?

Q The one I just quoted. A. I think I made that statement, yes.

Q In substance? A. Yes.

Q Had you then been advocating something? A. Yes, I had been advocating the removal of the Trustees.

Q And hadn't you been advocating the cancellation? A. No, sir.

Q Did you advocate it at all? A. I did not.

Q You simply voted for it? A. I simply voted for it.

Q At the meeting of the Second Church? A. Yes, sir.

Q Who did advocate the cancellation? A. Well, there were—Mr. Harris was the gentleman who presented the resolutions that were adopted, and the resolutions—if you would like to see them I think we have a copy of them.

Q Oh, no, I won't trouble you. I asked, who? A. Mr. Harris presented the resolutions and spoke on them, and some other members, whom I don't recall, spoke in favor of them.

Q Several spoke on them? A. Yes.

Q Urging the cancellation? A. Yes.

Q Yes, that is right. And urging that the action of this church be sent to other churches? A. That was ad-

vocated. It was in the original resolution.

Q That was advocated too? A. Yes.

Q And it was after that that you voted for the cancellation?

A. After the resolutions had been amended by eliminating the sending them to other churches and to practitioners and nurses, and so forth, yes.

Q After that you voted for it? A. I voted for it.

Q You voted for it? A. Yes.

Q Now, since you have been here in Boston, have you been in conference with any of the other defendants, or counsel for the defendants? A. Well, I don't know whether you would call it a conference, Mr. Whipple. Some of the gentlemen called to see us at the hotel.

Q Who? A. Mr. Blakeley, I think the gentleman's name is, and the other defendant along with Mr. Bangs, and myself. That is, they asked us to call and see them in the hotel, and we did.

Q You conferred with Davis? A. I did not confer with Davis. I met Mr. Davis on the street one day and he spoke to me.

Q Did you read his message that he sent out on the 20th?

A. I did not.

Q Did you ever hear of it before—about the apathetic condition of the Chicago churches? A. I never heard of that message until today, Mr. Whipple.

Q Although you have been associated with Mrs. Armstrong on a committee? A. Yes, sir; but nothing of that kind was ever presented to the committee.

Q Have you had meetings at which Mrs. Armstrong was present?

A. Yes, sir.

Q Have you heard her speak of Mr. Davis? A. I don't recall of having heard her mention his name.

Q Or anyone in Boston? A. I don't recall it.

Q Have you had any correspondence with people in Boston, with the Directors or their counsel? A. Well, I had a very brief correspondence with the Directors—

Q When? A. Not with their counsel.

Q When? A. I wrote one letter to the Directors, and sent them one telegram.

Q When? A. I think in April of this year, if I remember correctly.

Q After your appointment? A. No; before my appointment on the committee.

Q Did you see Mr. Neal when he was in Chicago? A. No, sir, I did not.

Q Now, you sent a telegram before your appointment on the committee? A. I sent my telegram before the conference was held, yes.

Q Conference of churches? A. Yes, sir. And I think before the meeting in the Second Church.

Q Was it in reference to cancellations? A. No. It was simply in

reference to whether the present editors of the Christian Science publications had been elected by the Directors as provided in the Manual of The Mother Church.

Mr. WHIPPLE. Will you produce those, please?

Mr. MORSE. We haven't those. Have you copies of them?

The WITNESS. That is the telegram you refer to?

Mr. WHIPPLE. Yes.

The WITNESS. Yes.

Mr. MORSE. Have you a copy of it?

The WITNESS. I think Judge Chase has a copy of that telegram. I think I gave it to him.

Q This is a telegram which you sent before you had heard anything from the Directors? A. Yes, sir.

Q Or was it in reply? A. No. It was an inquiry I sent to them.

Q You still claim and maintain that it is the duty of the churches and individual Christian Scientists not to subscribe for the publications at present? A. I didn't say that. Mr. Whipple.

Q What do you say? A. Each Christian Scientist will have to work that problem out for himself.

Q Well, your resolution is that that should be done? A. As a member of the church I felt it was my duty to vote either one way or the other, and I voted for them.

Q And you voted for them? A. Yes, sir.

Q And you believe in your vote? A. I believe that I voted the right way.

Q But you do not think that it is proper or right for any Christian Scientist to influence any other in the slightest?

A. Well, I can only speak for myself on that, Mr. Whipple.

Q Well, this resolve of your Conference of Churches was sent to all the churches, and to other churches, was it not? A. Only the churches in Illinois, if I remember correctly.

Q Are you sure of that? A. I am quite sure. That is, by authority of the Conference, it was only sent to Chicago churches.

Q And Illinois churches. A. That is, the Illinois churches.

Q All of them? A. Yes.

Q Well, those were the only people that you wanted to influence, were the churches in Illinois? A. Pardon me. I think that a copy was directed to be sent to the Trustees and to the Directors, if I remember correctly.

Q Did you get a reply from the Directors? A. I don't know. I didn't —

Q But a copy of the resolution was sent to the Directors?

A. I believe that is correct. I am not quite positive.

Mr. WHIPPLE. Have you those letters?

Mr. MORSE. What letter?

Mr. WHIPPLE. Or telegram, or a copy of them.

Mr. CHASE. I cannot find any tele-

gram at all. I do not recall any. I haven't it here.

Mr. MORSE. Here are the originals.

Mr. WHIPPLE. It couldn't be the originals both ways, could it?

Mr. MORSE. No; the original of the telegram sent by Mr. Hemingway, and there is a copy of the telegram sent to Mr. Hemingway.

Mr. WHIPPLE. What about the letter?

The WITNESS. The letter, Mr. Whipple, had no bearing whatever upon the question of cancellation of subscriptions, if that is what you refer to.

Mr. WHIPPLE. Let us take it a moment, please.

(Papers are handed by Mr. Morse to Mr. Whipple.)

Mr. WHIPPLE. I will read these, if I may, if your Honor please.

(Original letter, dated Chicago, March 17, 1920, James A. Hemingway to The Christian Science Board of Directors, is marked Exhibit 6, and read by Mr. Whipple as follows:)

"Chicago, March 17, 1920.
"The Christian Science Board of Directors,

Boston, Mass.

"Dear Friends:

As a member of the Mother Church I respectfully request that you defer publication of the report of the General Welfare Committee, at least until after the problem in connection with the trustees of The Christian Science Publishing Society has been solved.

"It would seem the members of the Mother Church have ample to think about at this time and I hope that anything which might further disturb the field will be avoided.

"With much love and my grateful appreciation,

Yours sincerely,

(Signed) James A. Hemingway."

Mr. WHIPPLE. That is stamped with the stamp of The Christian Science Board of Directors, "Read March 19 1920", and "Received March 19 1920."

Q Just to make that subject of the letter clear: A year ago at the annual meeting of The Church, under the suggestion of the Directors a committee had been appointed on Welfare? A. Yes, sir.

Q And you had ascertained that they had prepared a report and were ready to give it out? A. I understood that they had a report prepared; yes, sir.

Q And a prominent member of that committee, Mr. Shield, was in Chicago, — a member of your church, — wasn't he? A. No, sir.

Q What church was he a member of? A. I think he was a member of the First Church.

Q Of the First Church? A. Yes.

Q And it consisted of seven members, did it—the Welfare Committee? A. Yes, sir.

Q Selected by the churches at the annual meeting of The Mother Church,

or nominated? A. No, sir. They were selected by the Readers; that is, the Chicago member was selected by the Readers of the Chicago churches.

Q They were selected by the Readers of the churches, or nominated, subject to approval by the Directors? A. I don't know whether it required the approval of the Directors or not.

Q And the fact is that you had heard that they had a report ready for publication and printing that you were afraid would be disturbing to the Directors? A. Well, I had heard that there were some things in it that might not help the field any in working out this problem.

Q Well, against the Board of Directors, frankly speaking?

A. No, I didn't hear there was anything in it against the Board. I heard there were things in it that would be a violation of The Manual if carried out.

Q I see. And of course anything about it that was a violation of The Manual would hurt the Directors? A. Well, it would hurt me as much as it would the Directors.

Q So that you did not want to have that published because you thought the field had enough to think about? A. Exactly.

Mr. WHIPPLE. The answer, if your Honor please, is dated March 22.

(Copy of letter, dated March 22, 1920, Chas. E. Jarvis, Corresponding Secretary, to James A. Hemingway, is marked Exhibit 7, and read by Mr. Whipple as follows:)

"March 22, 1920
"Mr. James A. Hemingway
S. W. cor. LaSalle & Washington
Streets
Chicago Illinois

Dear Mr. Hemingway:

The Christian Science Board of Directors instructs me to acknowledge receipt of your kind favor of March 17, with respect to the report of the Committee on General Welfare.

"The Directors instruct me to say that your recommendation is duly noted and they thank you for the thoughtfulness which prompted you to write them.

Sincerely yours,

Chas. E. Jarvis

Corresponding Secretary for
The Christian Science Board of Directors.

CEJ-F"

Mr. WHIPPLE. Then after receiving their note, on March 26 you were moved to send them this telegram, I take it?

The WITNESS. What is the date of this?

Q This is the 26th of March, and their letter in reply to yours of the 17th was dated the 22nd. A. I would like to say that my sending that telegram was not in any way prompted by the letter from the Directors, nor my previous letter to them.

Q But it was after that interchange

of letters? A. According to the date, yes.

(Telegram, dated Chicago, March 26, 1920, Hemingway to The Christian Science Board of Directors, is marked Exhibit 8, and read by Mr. Whipple as follows:)

"B Chicago Ill 948A Mar 26 1920
"The Christian Science Board of Directors

Falmouth and St Paul Sts Boston
Mass

Were the present editors of The Christian Science Periodical elected by The Christian Science Board of Directors as provided in The Manual of The Mother Church Please answer by wire or letter to thirty north LaSalle St Thank you. James A. Hemingway."

Mr. WHIPPLE. And the answer on March 26th.

(Copy of telegram, dated March 26, 1920, Board of Directors to James A. Hemingway, is marked Exhibit 9, and read as follows:)

"March 26, 1920
"Mr. James A. Hemingway
30 North La Salle Street
Chicago Illinois

NO

Board of Directors."

Q That is all the communication that you have had, is it?

A That is all I have had with the Board; yes, sir.

Q What did you do with these telegrams and copy of your answer,—did you read them to the churches, or any of them? A. I stated at the—might I explain how I came to send the telegram?

Q No; I wish you would state an answer to my question. What did you do with them? A. I stated at a meeting of our church when the question came up, that I had sent such a wire and that I had received such a reply.

Q And did you tell them why you had sent that telegram?

A I stated in my own church why I had sent it, yes.

Q And in substance it was so that if the Directors had not elected the editors you should cancel? A. The question was—

Q Pardon me. Was that in substance it? I don't want to cut you off, but was that in substance why you told them you sent it?

A No. I am going to tell you why I sent it.

Q Well, that I do not ask unless it was the question which I put. You see, you have been examined by your own counsel, and I want to get as short answers as I can. A. I don't know that my making the statement had anything to do except to clear up the situation as to whether the present editors were in fact elected by the Directors.

Q Were you informed at all before you undertook to communicate with your church that the Trustees, when Mr. McKenzie and his associates resigned suddenly and without notice,

had tried to get the Directors to nominate someone who would be—or name someone who would be acceptable to the Directors themselves as editors? A. I think I saw such a statement that had emanated from the Trustees.

Q Did you see it before you read these telegrams? A. I don't recall, Mr. Whipple.

Q Well, when did you see it? When did you see that as emanating from the Trustees,—that they had tried to get the Directors to cooperate with them so that they might appoint editors?

A I think, if I remember correctly, that statement was contained in a lengthy telegram that they sent to each of the churches in Illinois about the time that the churches were holding their meetings for the purpose of passing upon the resolutions adopted at the conference.

Q Did your church refuse to have the telegram read? A. I don't know—the question was not presented to the church.

Q What? A. The question was not presented to the membership of the church.

Q I thought you said you heard it read at your church? A. No, no.

Q Well, at what church did you hear it read? A. I didn't hear it read in any church.

Q I thought you said it was a telegram which you heard read—

A No; I said I thought it emanated from some statement that the Trustees sent out. I received one of those by mail, from the Trustees, I presume. They sent out a copy of the telegram to each subscriber, I presume, of the periodicals.

Q I thought you said a moment ago, sir, that you first heard of it in a telegram sent out by the Trustees to churches in Chicago, stating their position—didn't you? A. Yes. I didn't say I heard it read.

Q Was one sent to your church? A. Yes, sir, I believe it was. I was so informed.

Q Who informed you, sir? A. Some member of the Board of Directors, I don't recall which.

Q When? A. I think about the time it was received, or shortly afterwards, perhaps.

Q Well, can you tell when that was?

Mr. WHIPPLE. What was the date? A. I know it was prior to the date of the meeting called for the purpose of acting upon the resolution.

Q Was it before or after you had received your reply from the Directors in the telegram which was just put in evidence? A. Well, if my letter was in—it must have been about the same time I presume, or something about the same time.

Q No; I will ask you to look at these telegrams. Your telegram was on the 26th as I remember it—yes, on the 26th. Now, I understand that

you read that telegram and read the Directors' answer at the meeting of the church? A. No, sir; no.

Q Didn't you? A. No. I had heard of the telegram, and I had heard that the statement was made—

Q No; did you read the copy of the telegram which you sent to the Directors, and their reply, at any meeting of the church?

A. I stated the substance of the telegram. I did not—

Q At what meeting of the church was that? A. That was a meeting which was held on the Monday preceding the conference. It would be about the 29th of March.

Q About the 29th of March? A. I think so.

Q Or the 28th? The 28th or the 29th of March? A. I think so. About that.

Q Had you then heard of this telegram which the Trustees had sent? Will you look at it, please (handing paper to witness)?

A I don't think I had, Mr. Whipple. I think this was sent after the conference, not before.

Q After the conference of the churches? A. Yes.

Q That is, after April 2? A. After April 2 that was sent out.

Q Was it read in your church? A. No, sir.

Q Did you know of its being read in any church, at any church meeting? A. That I don't know.

Q Did you contribute to the employees' fund here in Boston?

A No, sir.

Q Did you have any correspondence with Mr. Cudworth, or any member of the committee? A. No, sir.

Q You received the application to contribute, did you not?

A I do not recall, no. I don't think I did.

Mr. WHIPPLE. That is all.

Mr. KRAUTHOFF. May I ask this witness the same questions?

The COURT. Yes.

Q In what you have testified, Mr. Hemingway, as to your actions and intentions, have you been acting as a member of the Mother Church? A. Yes, sir.

Q Under your understanding of what the Manual required and authorized you to do? Perhaps I will separate that. Under your understanding of what the Manual required you to do with respect to the literature of the Christian Science Publishing Society?

A. I think, Mr. Krauthoff, you are assuming I have been urging the cancellation of subscriptions.

Q Whatever you have done? A. Whatever I have done I have done because of the fact that I am a Christian Scientist endeavoring to uphold the Manual.

Q And a member of the Mother Church? A. Yes.

Q And that applies to what you intend to do? A. Yes.

RE DIRECT

Q (By Mr. Whipple: But in these resolutions you joined with them as a member of a branch church? A. Yes, that is true; there is the Mother Church and the branch churches.

MR. CHOATE: May it please the Court, do you desire to have Mr. Fosbery's case go on now?

THE COURT: I think it better.

ARTHUR F. FOSBERY, Sworn.

Q (By Mr. Choate) Mr. Fosbery, what is your full name? A. Arthur F. Fosbery.

Q Where do you reside? A. San Francisco.

Q Are you a native of California? A. No.

Q Where was your birthplace? A. Ontario, Canada.

Q How long have you lived in California? A. Twelve years.

Q What has been your occupation there? A. Christian Science practitioner.

Q During all the period of your life there in San Francisco? A. Yes.

Q Had you belonged to the Christian Science Church before your residence in San Francisco? A. No, I was not a member.

Q You became a member on moving there? A. Yes.

Q And have remained a member ever since? A. Yes.

Q For how many years have you been a practitioner? A. Twelve years.

Q How many churches are there in San Francisco? Christian Science Churches, I mean. A. Eight I think, and another one is just forming—eight or nine.

Q Are those all in San Francisco? A. Yes.

Q In Oakland near by how many are there? A. Seven.

Q Of which one are you a member? A. The First Church of Christ Scientist at San Francisco.

Q Does first, in the sense you use that name, mean the one first formed or organized there? A. Yes, the one first organized.

Q Were you one of the organizers of that church? A. No, it was formed many years before I went to San Francisco.

Q At the time that suit was brought by the Trustees against the Directors did information of its commencement come to your attention? A. Yes.

Q Were you a subscriber to the Christian Science Monitor? A. Yes.

Q And to the other periodicals? A. Yes.

Q Any other members of your family subscribers? A. Yes, my wife does.

Q And through these channels did you learn of the filing of the bill? A. No; I was in Boston or on the road to Boston I think at the time.

Q You learned it in that way? A. Yes.

Q At any time did a copy of it come to your attention? A. Yes.

Q And you read it? A. Yes.

Q Now at that time did you come to any independent decision of your own without consulting anybody as to what course you would take with reference to it? A. Yes, sir.

Q What was it. A. That if the trustees should gain a legal verdict I would discontinue my subscriptions to all the periodicals.

Q When did you reach that decision? A. When I read the bill in equity, sometime in March 1919, I believe it was.

Q What were your reasons for it? A. Because I felt that it would not be authorized Christian Science literature if it was not published in accordance with Mrs. Eddy's plan and directions as given in the Manual.

Q Particularly will you point out to his Honor what you say you thought in regard to it? A. I felt that the Trustees would be the sole authority in what should go into the literature, into the periodicals; that the Directors would have no say and that the field would have no say in it.

Q And if that view prevailed you felt it would not be authorized Christian Science literature? A. Yes.

Q Did you feel it would be contrary to the teachings of Mrs. Eddy? A. Yes, I did.

Q You took no action between that time and the time when Judge Dodge made his decision? A. No.

Q You learned of Judge Dodge's decision through the Monitor? A. No, through our San Francisco newspapers. I saw published there a synopsis of his decision either December 21, or December 20, 1919.

Q You are not speaking of the Science papers, you mean the daily papers? A. Yes, the daily papers.

Q You read it there? A. Yes.

Q And as a consequence of that decision which you say you made in March or before, did you send this telegram? A. Yes, that was on Monday the 22nd.

Q Also this one? A. Yes.

MR. WHIPPLE: We will look for the original and see if we have it. You may use that subject to correction.

(Telegram marked Exhibit 10-F.)

MR. CHOATE: This is dated December 22, 1919. It is addressed to the Christian Science Publishing Society, Boston, Mass. "Cancel all our subscriptions to the periodicals issued by the Publishing Society as they are no longer organs of The Mother Church." Signed Arthur F. Fosbery and Eugenia M. Fosbery. 1925 Gough St., is the address of the sender.

MR. WHIPPLE: I wish the original might be produced by the Directors.

MR. CHOATE: The next is dated December 22, 1919, addressed to the Christian Science Board of Directors of the First Church of Christ, Scientist, Boston. "We urge appeal from decision of court. Field will now give you more active support. We today wired cancellation of our periodicals. Others are doing the

same. We assure you of our earnest support in your endeavor to uphold the Manual." Signed Arthur F. Fosbery and Mrs. Eugenia M. Fosbery.

(Telegram marked Exhibit 11-F.)

Q I note that you say here "others are doing the same"—that is with reference to the cancellation of the periodicals. State how much you had learned as to the extent to which that same feeling prevailed in that section of the Christian Science world?

MR. WHIPPLE: Just a moment. I shall have to object to that question in that form. I don't see that it is very material.

THE COURT: Unless you claim that such feeling as they say sprung from any efforts of this man or his wife may have made. If you do not so claim the question is immaterial.

MR. CHOATE: This man is being charged with being a conspirator. We have a right to disclose his actions which will show whether he is a conspirator or not.

MR. WHIPPLE: We are not going to try the question of conspiracy; we are now trying the question of this man's acts.

THE COURT: Do you claim this man conspired to such revocations as existed between San Francisco and neighboring places or not?

MR. WHIPPLE: At that time?

THE COURT: Yes.

MR. WHIPPLE: There were practically none at that time. We have no complaint of his activities before this time; we knew he had been in quite a different position—

THE COURT: I understand you have no complaints at this time.

MR. CHOATE: I still desire to ask the question. I think we are trying the conspiracy.

THE COURT: I exclude it.

MR. CHOATE: Will your Honor save us an exception?

THE COURT: Yes.

MR. CHOATE: I offer to show that there was a very general spontaneous movement among the Christian Scientists in San Francisco resulting from the same feeling that the publications of the Trustees were as they regarded it adulterated and not the true doctrine of the Christian Science Church, and that there was a general movement to cancel subscriptions for that reason.

THE COURT: I exclude it as immaterial.

MR. CHOATE: We offer it in reply to the charge that there was a conspiracy in which this man was a party and in explanation of his actions and in answer to the claim that they were done as a part of a plan or part of a conspiracy.

Q Were there any meetings or conferences of the members of churches in northern California after the date of your telegrams, December 22, 1919? A. Yes, there was a conference of Mother church members from churches

in northern California in Oakland on January 3, 1920.

Q When you speak of churches in northern California do you limit it to Oakland and San Francisco? A. No, sir.

Q There are others outside of those two cities? A. There are 96 churches in California.

Q Had you anything to do with calling a conference of those churches? A. No. I attempted to have the First Church join with the two other churches in northern California for the purpose of calling such a conference.

Q When you say you attempted to do it, state what you did? A. I put such a motion to the Board of the First Church of which I was a member.

Q That means there was a meeting? A. A meeting of the Board of our church.

Q State when it was as nearly as you can remember? A. It was on that 22nd of December or a day or two afterwards, that is my recollection.

Q How many persons were present? A. Seven.

Q All members of the Board? A. All members of the Board.

Q That was the motion that you put? A. My motion was—I am speaking from remembrance of what the intention of the motion was—that the First Church unite with the First Church of Oakland, the Third Church of San Francisco calling a conference of churches in northern California to discuss the situation produced in Boston by the Master's report and to discuss the question of the discontinuance of the literature.

Q What became of that motion? A. It was lost.

Q What next did you do? You spoke of attending a conference? A. Well, the next place where I spoke, took any active part, was a meeting of the joint Boards of the churches of San Francisco.

Q How did that meeting come about? A. I believe it was called by the second church.

Q Is that your church? A. No, it was not. I am a member of the First Church.

Q Will you state who it consisted of? Who was present? I don't mean the persons, but describe who were present? A. The Boards of Directors of seven or eight churches were there. Eight churches were invited, I don't know for sure whether they all attended.

Q The call was sent out by the Second Church? A. Yes.

Q You attended as a Director? A. Yes.

Q Such a call being sent out, was it a part of your duty as a Director to attend? A. Yes, it was part of our duty with the members of our Board.

Q You did attend? A. Yes sir.

Q What did you do at that meeting?

A. I spoke in favor of accepting the call of the Oakland Church for a conference of the churches of northern California.

Q Now that is a different thing. Had there been issued a call? A. The Oakland churches had made that call.

Q How long previously? A. They made it the latter part of December.

Q That was a call for a conference of churches? A. Yes it was the conference of January 3.

Q You say you advocated accepting the invitation? A. Yes.

Q Anything else that you recall? A. The question of the literature was brought up, I don't remember my remarks on the question at that time.

Q Do you remember and can you state the substance of the position you took on it, or the position you stated? A. My remembrance of my attitude at that time was that we should not continue to furnish funds to the Trustees to fight the Mother Church with.

Q Why not? A. Because I felt they were disloyal.

Q And by that you mean you felt you should discontinue the subscriptions? A. Yes.

Q And furnishing funds through that channel? A. Yes.

Q Because you felt they were disloyal to the Mother Church and its teachings? A. Yes, that was my religious conviction.

Q Was that view suggested to you by anybody? A. No.

Q Had you been in communication with the Board of Directors in Boston? A. No, except for the telegram you read.

Q Did you know any of them? A. Yes.

Q Which ones? A. All but Mr. Merritt.

Q How long had you known them? A. Oh, I don't remember. For several years I think I have known them.

Q Other than the telegram which I have read did you communicate with them or they with you, one or the other. A. They sent a letter in answer to my telegram, stating in substance—

MR. WHIPPLE: Pardon me.

Q I will come to that in a minute. I have the letter here. I will come to it in a moment. But with reference to this particular matter, you were advocating, was there any communication between you? A. No.

Q Now that conference of churches called by the Oakland churches, what did you do? A. I was invited by the program committee to advise with them in preparing the program of the meeting.

Q That was prior to the meeting. of course? A. Yes.

Q What did you do? A. I assisted in preparing the resolutions which were passed at that meeting.

Q Was that the resolution that was subsequently put in print? A. Yes.

Q I have it here. A. Yes, the

resolution was quoted in the fore part of that conference report, also at that time I advocated that the question of the discontinuance of the literature be not brought up.

Q State that once more, please. A. When I met with the program committee before the conference I advocated that the question of the discontinuance of the literature be not brought up at the conference.

MR. CHOATE: We offer the reply of the Directors to his telegram.

[Letter marked Exhibit 12-F.]

MR. CHOATE: The letter is as follows:

"January 17, 1920.

Mr. and Mrs. Arthur Fosbery,
166 Geary Street,
San Francisco, California.

Dear Friends:

The Christian Science Board of Directors instructs me to acknowledge the receipt of your telegram of December 23, 1919.

In reply the Board desires me to say that notwithstanding contrary rumors the Board has not advised and does not desire cancellation of subscriptions to the Christian Science periodicals. On December 20, 1919, the Master in the case of Eustace et al. vs. Dickey et al. delivered to counsel for the parties a draft of the report made by him. This draft is not in final form; when it is it will be filed in Court. The impression that the Master's report, when filed, will be decisive of the pending controversy between the Trustees of The Christian Science Publishing Society and the Directors of The Mother Church is erroneous. The legal right of The Mother Church, through its Directors, to exercise supervisory control of the Christian Science periodicals is a question to be decided by the Supreme Judicial Court of Massachusetts. The Board believes that all Christian Scientists should wait patiently for the Court's decision.

Thanking you for your very kind message and with all good wishes,

Sincerely yours,

Charles E. Jarvis,

Corresponding Secretary for
The Christian Science Board of Directors.

Q Do you recall when the conference was held? A. January 3, 1920.

Q And were resolutions adopted at that conference? A. No.

Q What action if any was taken. State in your own way what occurred? A. The chairman was asked to appoint a committee of five to prepare a report stating what our rights were as beneficiaries under all the trusts, in connection with the situation in Boston. Whether I have the exact words I don't know; it is in the report.

Q Did you present the motion? A. No.

Q Had you anything to do with it? A. Except I assisted in preparing it.

Q Who did present it? A. I don't remember.

Q Did you vote for it? A. Yes.

Q And as a result was that committee appointed? A. Yes.

Q Were you on it? A. No.

Q Now is that the paper that you have reference to? A. No.

Q Which one of these that I have here is it? A. This is the report of the Committee. Their authority for doing it is stated in the first paragraph.

MR. WHIPPLE: Did you say you assisted in preparing this report and voted for it?

MR. CHOATE: He said he assisted in preparing the program and that the Committee prepared this report.

MR. WHIPPLE: It seems to me a lengthy report of the conference committee. I don't care to discuss it at all. I leave it to your Honor, but off hand I don't see how it is material.

MR. CHOATE: It all bears upon the movement of the churches of which this defendant was a member. It shows the atmosphere in which he was living. It bears upon the question of whether his conduct was the result of a plan or scheme or conspiracy to interfere with these plaintiffs or was the spontaneous action of a man who devoutly believes in what he was doing.

THE COURT: You may read it.

(Report of Conference Committee marked Exhibit 13-E.)

Mr. CHOATE: At the top is the quotation as follows:

"The Magna Charta of Christian Science means much, multum in parvo—all-in-one and one-in-all. It stands for the inalienable, universal rights of men. Essentially democratic, its government is administered by the common consent of the governed, wherein and whereby man governed by his creator is self-governed."

(The First Church of Christ Scientist and Miscellany, page 254.)

REPORT OF CONFERENCE COMMITTEE

To the members of The First Church of Christ, Scientist, in Boston, Massachusetts, residing in Northern California, and also the branch Churches situate therein.

Dear Co-Workers:

We, your Committee appointed under and by virtue of a resolution adopted at a conference of Mother Church members, held in Second Church in the city of Oakland on January 3rd, 1920, to present in writing to the members of The Mother Church residing in Northern California and also to the branch Churches thereof a plan by which it may be determined and established whether the members of The First Church of Christ, Scientist, in Boston, Massachusetts, or the branch Churches of The First Church of Christ, Scientist, in Boston, Massachusetts, have any rights, powers or authority over said Church or in its af-

fairs, including the business and activities of the Christian Science Publishing Society, to the end that we may be able to maintain inviolate the Manual and the sanctity of the cause of Christian Science, beg leave to report as follows:

First: It does not appear to your Committee that the branch Churches, as branch Churches, have under the Manual any legal standing or rights or privileges which can be enforced either in law or in equity concerning either the affairs of The Mother Church or the Publishing Society or any of the activities of either thereof.

Second: We are of the opinion that there is nothing in the Manual which prevents members of The Mother Church assembling upon their own initiative as we have done, for the purpose of discussing their rights under the Manual as individual members of The Mother Church, or from appointing committees to investigate and ascertain whether members of The Mother Church have any legal rights which can be enforced or whether they have any ownership as beneficiaries under the various trust deeds executed by Mrs. Eddy; that such inquiry would relate only to their rights as individual Church members and not as representatives of branch Churches; that if it be the desire to have a meeting of the members of The Mother Church as The Mother Church, such meeting would have to be called as provided by Section 3 of Article 13 of the Manual.

Third: That the individual members of The Mother Church possess the right to institute an action, or actions, in equity for the removal of any unfaithful officer who exercises control over any trust property the income of which has been conveyed by Mrs. Eddy, either generally or specifically, to the cause of Christian Science; that the members of The Mother Church are, under the terms of the Manual, Article XXIV, Sections 2 and 3, as well as in contemplation of law, beneficiaries under said trust deeds, and that the real ownership of the property is in the membership though the title and right of control are vested in persons named and their successors; that none of the persons named in the trust deeds, or their successors in office, have any beneficial interest in the property other than possessed in common by all members of The Mother Church; that so long as faithful in the execution thereof, the persons named in the trust deeds, and their successors, have exclusive control of the direction and management of the trust property and also in the application of the income to carrying out the purposes of the trust; that the rights of the members consist in having the trust, or trusts, faithfully executed.

Fourth: That when relief or re-

dress in the case of unfaithful trustees or officers cannot be conveniently secured through the ultimate power of discipline vested by the Manual in the members of The Mother Church, a court of equity will entertain a suit brought by one or more members of The Mother Church to remove such officers or trustees from office.

Fifth: That even though The Mother Church may not be a body corporate, it is, nevertheless, a religious association with a membership, manual and by-laws, and the rights of members may be enforced in equity to the same extent and as fully and completely as though The Mother Church were, in fact, incorporated.

Sixth: That the disbanding or dissolution of the association known as and called First Members does not affect or imperil the rights of members of The Mother Church or estop such members from taking any action deemed wise or necessary to protect the property belonging to the Church or the cause of Christian Science, to maintain the supremacy of the Manual, or to insure the publication of only properly authorized literature.

Seventh: That whether the Church Manual has or has not been adopted in accordance with the usages and customs known to the law governing other Churches, it will be finally held that the Manual of The Mother Church, by reason of acquiescence and acceptance, is valid and binding and constitutes the governing law of said Church.

Eighth: That any injunction against the Directors of The Mother Church cannot be used to hinder, retard or prevent action by members thereof, for the reason that action by the members would not be under, by or through, the Directorate of the Church, nor as their servants, or agents in any particular, but would be exclusively an independent proceeding.

Ninth: That one or more members of The Mother Church can institute disciplinary proceedings as provided for in Articles I, XI and XXIV of the Manual, and can under the Manual demand the resignation of unfaithful officers, the excommunication of disloyal members, and prevent teaching which is not in accord with the principles of Christian Science.

We believe that these rights can best be established by united action of the Field. Your Committee therefore presents the following plan:

I. We recommend that a meeting be had of delegates representing the members of The First Church of Christ, Scientist, in Boston, Massachusetts, resident in the several States, to take action as follows, to-wit:

1. To endeavor to obtain the immediate voluntary resignation of the Trustees (of the Christian Science Publishing Society).

2. If necessary, to take immediate steps to compel the removal of said Trustees not only from office but from membership in our Cause:

(a) By calling together the First Members and the Board of Directors to act in the matter;

(b) By proceeding for the removal of said Trustees from membership in The Mother Church, under Sections 1, 2, 3, 5 and 7 of Article XI of the Manual, and under or under any other provision that may be applicable or available;

(c) If necessary, by having called a special meeting of the members of The Mother Church, to enact any other or further provision and to take such further steps as may be necessary to establish and insure the control of the members of The Mother Church over its officers and affairs;

(d) By taking such other proceedings within our own organization as may be deemed necessary;

(e) By any appropriate court proceeding which may be deemed advisable, and

(f) By any other means that may be lawful and available.

3. And generally to take any and all steps necessary to insure our cause against the activities of unfaithful officers as fully and completely as though specifically set forth herein, to the intent and purpose that the trusts established by Mrs. Eddy may remain unimpaired and governed according to her wishes as expressed in the various provisions of the Manual.

II. That the chairman of this conference appoint a committee of seven to aid him in making the appointment of a delegate or delegates to attend such meeting.

III. That said chairman fix a time and place for such meeting and invite the members of The Mother Church residing in other States to appoint representatives to then and there meet with our representative or representatives for the above purposes, the number of said delegates not to exceed three from each jurisdiction having a Committee on Publication.

IV. That if a meeting of representatives of members of The Mother Church is arranged for by other fields for the above or similar purposes, then our representatives above provided for be and they are authorized to attend such meeting, and should we be entitled to further representatives thereat, then that they be appointed in the same manner and have the authority above set forth.

V. That in the event such meeting be not held, or if held and action is not taken to carry out the plan herein proposed, then our representatives immediately proceed to carry out the purposes heretofore expressed in this report.

VI. That the delegates without delay report back to the Chairman of the Conference any and all action taken by them.

Tenth: Recognizing that the plan herein proposed will involve considerable expense even though the desired purposes may be accomplished without litigation, and also recognizing that it would not be right to ask any persons appointed such delegates to bear their own expenses, we would further recommend that the committee to be appointed to assist in the selection of delegates hereinbefore provided for also constitute a financial committee to take charge of the raising of the necessary funds, with full power to place this matter before all the members of The Mother Church in Northern California, and with full power to act.

Eleventh: Your Committee, recognizing that in the working out of the problems now confronting Christian Scientists no definite period of time can be fixed for ultimate results, would respectfully counsel against hasty or inconsiderate action, knowing, as we do, and fully convinced as we are, that while individuals, in questioning the comprehensive and all-embracing scope of various provisions of the Manual given us by our Leader, Mary Baker Eddy, may induce trouble and unrest, there is no real or abiding cause for dismay or discouragement—that the word of Truth is mightier than the ambitions of men, and that the Christian Science movement does not wait or depend on personality.

“Be strong and of a good courage, fear not, nor be afraid of them; for the Lord thy God, He it is that doth go with thee; He will not fail thee, nor forsake thee.” (Deuteronomy 31:6.)

“Justice and judgment are the habitation of thy throne; mercy and truth shall go before thy face.” (Psalm 89:14.)

“When the smoke of battle clears away, you will discern the good you have done, and receive according to your deserving. Love is not hasty to deliver us from temptation, for Love means that we shall be tried and purified.” (Science and Health, 22:18-22.)

J. A. PLUMMER, Chairman, Stockton, Calif.,

CONSTANCE L. DEAN (MRS. ROBERT A. DEAN), Secretary, San Francisco, Calif.,

RACHEL V. COLBY (MRS. WM. E. COLBY), Berkeley, Calif.,
ARTHUR E. MILLER, Sacramento, Calif.,

FRED B. KERRICK, Treasurer, Oakland, Calif.

The above report, with few dissenting votes, was adopted at a conference of members of The Mother Church, The First Church of Christ Scientist in Boston, Mass., residing in Northern California, which conference was held February 14th, 1920, in Second Church of Christ Scientist, Oakland, California, and copies were ordered to be sent throughout the world, to all Christian Science Churches, Societies and Practitioners so far as known to the committee.

WILLIAM ARTHUR NEWMAN, Secretary.

556 61st Street, Oakland Calif.

R. W. MEEK, Chairman of Conference.

Oakland, Calif.

Dated February 19, 1920.

Q As I understand you, you had nothing to do with the preparation of that report? A. No, I don't think I had anything to do with it.

Q Did you receive one? A. I received one, yes.

Q And so far as you know were they in accordance with the terms of the vote sent throughout the world to all Christian Science Churches?

A So far as I know, yes; I have no knowledge of that.

Q On your telegram of December 22 cancelling your subscriptions, was any attention paid to it by the publishers. A. No.

Q Did they continue to send their publications just the same? A. Yes.

Q For how long? A. They were still sending them the first week in March, 1920. I wrote them again then to discontinue, calling their attention to my former telegram.

Q Did you address that communication to the Christian Science Publishing Society? (Showing paper to the witness.) A. No, I don't know who wrote that.

Q That you did not send? A. No.

Q How did it come into your hands? A. I think Mrs. Jacobs gave me that shortly after I arrived in San Francisco—Mrs. Grace C. Jacobs.

Q Shortly after when? A. After I arrived in Boston.

Q That is recently? A. Some time in March.

Mr. CHOATE. I would like that marked for identification, please.

(The document shown to the witness is marked “Exhibit B for Identification.”)

Q Now, at any time did you see the so-called Harney telegram?

A Yes.

Q Where did you see it? A. In Mr. Ross' office in San Francisco.

Q What Mr. Ross is that? A. Mr. Peter V. Ross, Committee on Publications.

Q Is he a Christian Scientist? A. Yes.

Q And connected with what church? A. Why, I don't know; he is a member of either Second or Eighth Church in San Francisco. I don't know which.

Q How happened you to be at Mr. Ross' office? A. I was talking to him about the advisability of calling a conference.

Q The telegram came to him, did it? A. Yes.

Q And while you were there he showed it to you? A. He opened it and showed it before me.

Q It came in while you were talking with him? A. Yes.

Q What did you say about it? A. We first discussed the question as

to whether it was really from Harney or not; it was signed Harvey.

Q H-a-r-v-e-y? A. Yes. We thought it might be a fake telegram. Then we concluded that it must be from Harney, and I said that Harney was a fool for sending it, and I said that I was quite sure that Judge Smith would not have been so foolish as to have sent out—deny the sending out of a telegram—which would certainly act as a boomerang on himself and the directors.

Q Did you honestly entertain those views? A. I did.

Q Did you take any action at all in consequence of seeing that telegram? A. No.

Q Were you influenced in any way by it? A. Not to my recollection. The action that I took I would have taken anyway, regardless of the telegram.

Q And you were not induced by that telegram or led by the telegram to take any action that you did take? A. No.

Q Or to entertain any beliefs that you did believe? A. No.

Mr. WHIPPLE. That is to say, he would have done just the same thing anyway.

The WITNESS. Yes.

Mr. WHIPPLE. The foolishness was not in doing—

Mr. CHOATE. Pardon me a minute.

Mr. WHIPPLE. Very well.

Mr. CHOATE. If you will postpone your examination a little while.

Mr. WHIPPLE. I mean to.

Mr. CHOATE. You will have to, I guess.

Mr. WHIPPLE. You have the floor.

Q Now when did you come to Boston? A. The 13th of March, 1920.

Q And in what capacity? A. As one of the delegates appointed in accordance with the report adopted at the Second Oakland conference.

Q And did you bring that with you as your authorization? (Showing paper to witness.) A. Yes.

Mr. WHIPPLE. Has the evidence of this conference been put in? Was this appointment made at the meeting which adopted that report which you read?

Mr. CHOATE. No, I understand not.

Q It was at that meeting, the meeting the report of which I read, or the subsequent meeting? A. No; the report you read was the report of the committee appointed at the First Oakland Conference, which was adopted at the Second Oakland Conference.

Mr. CHOATE. You do not object to that?

Mr. WHIPPLE. No.

Mr. CHOATE. (To the stenographer) If you will mark an "F" after this, please, so that we can identify it.

(Letter, from R. W. Meek, Chairman, to members of The Mother Church, dated March 8, 1920, marked "Exhibit 13, F," and is copied into the record as follows:)

(Exhibit 13. F.)

Conference Committee of Christian Scientists of Northern California.

March 8, 1920.

To Members of
The Mother Church,
The First Church of Christ,
Scientist, in Boston, Massachusetts.
Dear Friends:

The bearer, Mr. Arthur Fosberry, has been duly appointed as delegate to represent those members of The Mother Church residing in Northern California in accordance with action taken at a conference of such members held in Second Church of Christ, Scientist, Oakland, California, February 14, 1920.

As such delegate he has full power to act, also to confer and cooperate with other delegates from the Christian Science fields, in conformity with the report adopted at the above mentioned conference, a copy of which is hereto annexed.

Very truly yours,
R. W. Meek
Chairman.

Q Before I read this, Mr. Fosberry, will you tell his Honor in your own way proceedings which led to your being appointed a delegate? The report that I have read recommended the appointment of delegates. Now will you go on and state how those delegates were selected? A. According to the report, the chairman appointed seven members to aid him in selecting the delegates, and they phoned to my house on the 7th of March and asked me if I would come over to see them, they were meeting in Oakland. I went across, and they told me that they had appointed me as a delegate and asked me when I could start for Boston.

Q When you went across where did you go? A. I went across the Bay from San Francisco to Oakland.

Q Yes; but to whose place or office or house? A. To one of the churches in Oakland; I believe it was Second Church, but I don't remember that.

Q And there did you find the chairman, Mr. Meek? A. Yes.

Q And others meeting with him? A. Yes.

Q And you consented to come? A. Yes.

Q And they then gave you this authority? A. Yes.

("Exhibit 13, F." is read by Mr. Choate.)

Mr. WHIPPLE. Have you the copy attached?

Mr. CHOATE. Well, the copy attached was the report dated February 14, which I just read.

Mr. WHIPPLE. Well, was it?

The WITNESS. Yes; it was the report of the Second Conference Committee which Mr. Choate read.

Mr. WHIPPLE. I thought that was the first conference committee.

The COURT. Made at the first con-

ference but reported at the second, as he previously testified.

Q Now, prior to your coming had Mr. Meek, as chairman of that conference, sent out notices like the one I now hand you? (Handing paper to witness.) A. I don't know what date these were sent out. These were sent out with the report of the second conference.

Q Did that come to you as a practitioner? A. Yes.

Q Through the mails or how? A. Yes, through the mails.

Q Along with the report? A. Yes. Mr. CHOATE. This is printed, if your Honor please.

(Notice, signed by R. W. Meek, Chairman, to Christian Science practitioners and churches, dated Oakland, California, February 20, 1920, is marked "Exhibit 14, F," and copied into the record as follows:)

(Exhibit 14, F.)
Oakland, California,
February 20th, 1920.

To Christian Science Churches and Practitioners.
Dear Friends:

At a conference of members of The Mother Church residing in Northern California, held February 14, 1920, at Second Church in Oakland, California, the following resolution was offered from the floor and adopted practically unanimously, and copies were ordered sent to the Christian Science churches and Practitioners throughout the world.

Resolved: that it is the sense of this assembly that the literature now being published by The Christian Science Publishing Society (with the exception of the works of Mary Baker Eddy, the Quarterly, the Hymnal, the Concordances, the Life of Mary Baker Eddy, and the History of The Mother Church) shall be considered unauthorized Christian Science literature, not to be purchased, sold, or circulated as Christian Science literature in any way until such time as it is edited and published by loyal Christian Scientists.

R. W. Meek, Chairman,
Oakland, Calif.

William Arthur Newman, Secretary,
556 61st Street, Oakland, Calif.

Q Now, Mr. Fosberry, you have shown what you did with reference to cancelling your own subscriptions. Did you do anything with reference to a petition to the trustees of the Publishing Society to resign? A. Yes.

Q State what you did. A. I received a telegram from Mr. Cudworth giving me the wording of the petition, and I had the petition printed on forms and sent first to the churches of Northern California, and then to the coast State churches.

Q And is this paper that I now show you— A. Yes, that is a copy.

Q —a copy of the form of petition? A. Yes.

Mr. WHIPPLE. Have you the telegram from Mr. Cudworth, Mr. Choate?

Mr. CHOATE. Don't be impatient.

Mr. WHIPPLE. I thought that was a perfectly respectful question; you ought to answer one respectfully once in a while.

The WITNESS. That went to the churches I believe outside of California—outside of Northern California.

Mr. WHIPPLE. I was asking for the telegram that he received. Have you that?

Mr. CHOATE. I am offering those two papers. At the proper time I will deal with the question of the telegram.

Mr. WHIPPLE. I have no objection to those.

(Letter, signed by Arthur F. Fosberry, dated San Francisco, California, March 2, 1920, enclosing petition, is marked "Exhibit 15, F." The enclosed petition is marked "Exhibit 16, F.")

Mr. CHOATE. The petition, if your Honor please, is in print. It is addressed to Herbert W. Eustace, David O. Ogden and Lamont Rowlands. (The petition is as follows:)

(Exhibit 16, F.)

To Herbert W. Eustace, David O. Ogden, Lamont Rowlands, Trustees of The Christian Science Publishing Society, Boston, Massachusetts.

We the undersigned members of the Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, call upon you to resign our trusteeship because we are convinced that you do not obey the Manual of The Mother Church and you do not fulfill the demands of the Deed of Trust, which requires that the trustees be "Loyal, faithful and consistent believers and advocates of the principles of Christian Science."

Mr. CHOATE. Then there is room for twenty-five signatures and addresses, and at the bottom the notation: "Send completed lists to information room, 837 Little Building, Boston, Massachusetts." The letter which accompanies that, signed by Mr. Fosberry, is dated San Francisco, California, March 2, 1920.

(Exhibit 15, F.)

San Francisco, Cal., March 2, 1920.
Dear Friend:

The enclosed petition calling for the resignation of the trustees was sent here from Boston by Mr. Luther P. Cudworth. He informed me that some members of The Mother Church, after consulting counsel, had started the petition and opened an information center in the Little Building, Boston.

The originals of these petitions are to remain in the hands of loyal Christian Scientists, and if when

shown to the trustees they do not bring about the desired result, the petitions may serve a very useful purpose in the suit just entered against the trustees by the New York churches.

Sincerely yours,
Arthur F. Fosberry.

Q Where did Mr. Luther Cudworth live? A. In Boston.

Q How long had you known him? A. I had never met him.

Q Until when? I suppose you have met him since you have been in Boston, haven't you? A. Shortly after my arrival in Boston I met him.

Q Prior to that time you had never met him? A. No, not to my remembrance.

Q Had you had any communication with him? A. Yes.

Q Do you recall what was the occasion of your first communication, and when it was? A. Yes; in December; I think just after the synopsis of the Master's report was published in our local papers, about the 22nd or 23d of December, probably; I wired Mr. Cudworth.

Q Now, have you got a copy of that telegram? A. No.

Mr. CHOATE. Do you represent Mr. Cudworth, Mr. Dodge? Have you that telegram?

Mr. DODGE. I haven't it myself; Mr. Cudworth says that he has it.

Mr. CHOATE. Would you allow us to take it?

Q While the telegram is being produced will you state how it was you happened to wire Mr. Cudworth if he was a person whom you did not know? A. I saw his testimony in the earlier part of the litigation.

Q How had you read his testimony? A. I read his testimony in the Monitor.

The COURT. I don't get your answer.

The WITNESS. I read his testimony in the Christian Science Monitor.

Q Was there anything about his testimony that impressed you?

A. Yes; it struck me that Mr. Cudworth must be an honest man, to lose his position in order to testify to—

Mr. WHIPPLE. I pray your Honor's judgment.

Q Was there any other reason than that for your selection of him as a person to telegraph to? A. No.

Q Did you make any inquiries about him? A. No; no recollection.

Q Simply from the impression that his testimony made upon you, you selected him to telegraph to? And is that the telegram you sent? (Showing paper to witness.) A. Yes.

[Telegram dated December 30, Fosberry to Cudworth, is marked as Exhibit 17, and read by Mr. Choate, as follows:

Exhibit 17.

"San Francisco Calif 11 03 AM Dec 30

"Luther P. Cudworth

"12 Brown St Bkline Mass

"Ask Choate if he would be willing to enter case for organizations and members to petition court for removal of trustees wire collect if you will attend to this and wire again after you have seen him Portland and twelve Bay organizations have cancelled literature others contemplating same action wire Choate full name and address

"Arthur F. Fosberry."

Q Did you receive that reply, or this first one,—did you receive this first one [handing papers to witness]? A. Yes, I received both those.

[Telegram dated December 31, 1919, Cudworth to Fosberry, is marked as Exhibit 18, and read by Mr. Choate, as follows:

Exhibit 18.

"Boston Mass 6 05 P Dec 31 1919

"Arthur F Fosberry

"1925 Gough St San Francisco Calif
"Unavoidable delay in obtaining necessary papers make answer from attorney impossible before Friday will wire immediately holiday tomorrow
"Cudworth."

[Telegram dated January 2, 1920, Cudworth to Fosberry, is marked as Exhibit 19, and read by Mr. Choate, as follows:

Exhibit 19.

"Brookline Mass 7P Jan 2 1920

"Arthur F Fosberry

"1925 Gough St San Francisco Calif
"Am advised by attorney intervention in litigation by Field would be of no avail and will advise at this time will write please take no action

"Cudworth."

Mr. CHOATE. The telegram [Exhibit 19] reads "and will advise." I think that should read "and ill advised at this time. Will write. Please take no action. Cudworth."

Q Now, do you remember when Mr. Cudworth wrote you with reference to the form of petition? A. No, I don't remember it.

Q Have you the original letter? A. Yes, I have the original telegram here somewhere. I will find it. Those are copies; I haven't got the originals.

Q You haven't got the originals? A. No, sir.

Mr. CHOATE. Have you a copy, Mr. Cudworth, of the telegram which you sent in reference to the petition?

The COURT. I think it will be advisable to stop here till tomorrow morning at half past nine.

[Adjourned to 9.30 A. M., Tuesday, May 25, 1920.]

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Tuesday, May 25, 1920

BOSTON, Massachusetts — Further arguments in the case of Eustace et al v. Harney et al were heard, Tuesday, May 25, 1920, before Justice Pierce, as follows:

SECOND DAY

The Court came in at 9:30.

Tuesday, May 25, 1920.

ARTHUR F. FOSBERY, resumed
DIRECT EXAMINATION CON-
TINUED.

THE COURT: Before going on with the witness let me ask how long will it take to consider these cases, Mr. Whipple? There are three motions for dissolution of the injunction.

MR. WHIPPLE: I think that will depend upon the direction for the hearing that your Honor may give. I shouldn't think myself it would take a great while to deal with them because the evidence is very clear and it can be presented in an hour's compass, but of course your Honor may be invoked to go pretty far afield.

THE COURT: I am asking so that I may make certain reliefment so to speak.

MR. WHIPPLE: I suppose those who make the motions may try to go farther afield than we think they should.

THE COURT: Is it safe to say they are likely to be disposed of in a day's time?

MR. WHIPPLE: I should venture yes that it could be done, but the other side have the advantage over me in knowing what they have to present.

MR. DODGE: I think we have eleven witnesses—defendants. The testimony of some of them will not be long.

THE COURT: Every one may be excused until Thursday morning.

MR. CHOATE: If your Honor please, Mr. Dodge, counsel for Mr. Cudworth has kindly furnished me with copies of telegrams which complete the correspondence between the witness and Mr. Cudworth.

Q That appears to be a copy of Mr. Cudworth's reply to you asking for my full name and address? A. It is.

MR. CHOATE: The telegram reads: "Dec. 30, Arthur F. Fosberry, 1925 Gough St., San Francisco, Calif. Saw attorney within hour after your wire careful consideration of findings to be made in morning conference in afternoon. My full interest is in this ready to serve day or night. Charles

F. Choate, 30 State St. Wire me 12 Browne St., Brookline.

[Above telegram marked Ex. 20-F.]

MR. WHIPPLE: May I ask whether that is a reply to the December 30th message?

MR. CHOATE: That is the first one.

MR. WHIPPLE: What was the number of the one to which this is a reply?

MR. CHOATE: That is a reply to Exhibit 17, which was dated December 30.

On December 31, Mr. Fosbery wired to Mr. Cudworth "Twelve Browne St. Brookline.

"Send direct wire regarding conference. Time is everything. Don't spare expense would Stanton of Portland endorse you as Boston agent if so seven organizations there might get into line tonight each organization can agree to pay pro rata of expense giving limit it is willing to assume be ready to launch into big headlines giving attorney name as soon as we have endorsement of few organizations and individuals it is not necessary to state number or location of organization in paper We are upbuilders and primary beneficiaries of trust yours for walkover Arthur F. Fosbery."

[Above telegram marked Exhibit 21-F.]

MR. CHOATE: Mr. Flynn do you happen to have a calendar of last year?

MR. FLYNN: No, sir.

MR. CHOATE: What day of the week was January 1 of this year?

MR. FLYNN: Thursday.

MR. CHOATE: Then December 31 was Wednesday. Obviously he was speaking of Friday as January 2nd. January 1, Mr. Cudworth telegraphed to Fosbery:

"Don't think Stanton knows me Burkhart of First Church Portland would no doubt give endorsement believe no important action should be taken until we hear from attorney on Friday. Cudworth."

[Above telegram marked Ex. 22-F.]

MR. CHOATE: On January 1—That last telegram was dated December 31st. The next one is January 1, from Cudworth to Fosbery.

"After hours of consecrated work it seems wisdom to wait. Situations here cannot be well explained to those afar, masters report probably not be made public for three weeks ascertained today final argument and decision may not be reached until June.

Aspects here constantly changing. These references helpful Miscellaneous writings 158 lines 19 to 23 Retrospection 85 lines 13 to 28 Miscellany 306 lines 12 to 30 will wire attorney's report tomorrow. Cudworth."

[Above telegram marked Ex. 23-F.]

Q Will you explain what those references are in the last line—the lines and numbers? A. They are the Writings of Mrs. Eddy and the page and line.

Q One refers to Miscellaneous Writings page 158, lines 19 to 23, and one to Retrospection page 85 lines 13 to 28. A. Yes.

MR. CHOATE: The next is the telegram that was put in yesterday which read "Am advised by attorney intervention in litigation by field would be of no avail; ill advised; will write; please take no action."

That was sent by Cudworth to Fosbery.

Now the next communication appears to have been on February 29.

Q Will you look at that telegram and see if that is the one you spoke of yesterday that was Mr. Cudworth's first communication to you about the petitions to the Trustees to resign? A. Yes.

MR. CHOATE: This one is without any date on it, but my inference is from its substance that it fits in about in this point in the correspondence.

THE WITNESS: That was sent February 28th.

Q It was. Then I am right.

MR. CHOATE: Please change the date from the 29th to the 28th. This is from Cudworth to Fosbery.

"Following petition addressed to the three trustees being signed here by Mother Church members Quote "We the undersigned call upon you to resign your trusteeship because we are convinced that you do not obey the Manual of The Mother Church and you do not fulfill the demands of the deed of trust which requires that the trustees be 'Loyal, faithful and consistent believers and advocates of the principles of Christian Science' print on cap size paper arranged for twenty five names send completed lists to information room eight three seven Little Building Boston. Cudworth."

[Above telegram marked Ex. 24-F.]

Q That is the first information you had about any petition by the Trustees? A. Yes.

Q That is what caused your action

with reference to the petition that we put in evidence? A. Yes.

Q Did you use exactly the language that was suggested by Mr. Cudworth? A. I believe I did; the petition is there.

MR. CHOATE: The next is a telegram from Mr. Fosbery to Mr. Cudworth on February 29th.

"Petitions printed and in mail last night to northern Calif. and three points south. Information is asked here as to who are behind movement and who is receiving petitions at Little Building. Will they hold originals for possible future proceedings and merely give wording and number of names to Trustees. Have you notified other fields send night letter collect. Fosbery."

[Above telegram marked Ex. 25-F.]
Cudworth to Fosbery, February 29.

"Your prompt work splendid. Chicago notified same as you. In touch with New York. Certain members Mother Church necessarily acting independently interested in this movement. Careful thought being given and proper counsel consulted in connection with the activity. Offices established Little Building convenient information center. All action taken with due moderation. All originals to be held by loyal workers for future use. Nothing given out at present. Cudworth."

[Above telegram marked Ex. 26-F.]

March 1, Mr. Cudworth to Mr. Fosbery.

"Judge Crosby denied motion to reopen case. Master's report will be filed within ten days. Suit entered today by N. Y. Churches thru their attorneys and Choate to dismiss trustees. Watch morning papers. Cudworth."

[Above telegram marked Ex. 27-F.]

March 2, Mr. Cudworth to Mr. Fosbery.

"Attorney in new suit requests us here to suspend work on petitions for few days. We are happy at outlook. Will keep you informed. New suit is really petition to Court for intervention by 1st members and field in present suit. Counsel will argue Friday March 5th requesting intervention. If court refuses separate suit will be entered at once. Petition can do no harm on coast. We are asked to hold action on it here until after Friday as a matter of legal etiquette to Court. Felt it wise you should know why we temporarily discontinue."

[Above telegram marked Ex. 28-F.]

March 3, 1920. 11:38 A. M. Fosbery to Cudworth.

"Explain further about petitions they cannot be harmful they have already been sent to four coast states very generally approved too late to stop them now to attempt it would cause confusion and tend to prevent united action rush. Fosbery."

[Above telegram marked Ex. 29-F.]

Then on the same date at I should say 2:50 P. M. Fosbery to Cudworth:

"Your first wire stated petition was being signed in Boston Burt Gale

wires Gale here that you informed him petition was contemplated but not signed which statement is true. I am being placed in awkward position by conflicting reports which play into enemies hands. I advocate prompt action to secure state wide signing regardless of suits it will unite field on definite expression of opinion. Gale's views not in agreement with mine. Fosbery."

[Above telegram marked Ex. 30-F.]
Cudworth to Fosbery. 10 P. M. March 3.

"Hundreds here ready to sign petition. Only waiting out of courtesy to Court, until Friday hearing. My former message explains. Very sorry for seeming error in first wire. No cause for regret in your action. State wide signing highly approved. Just telephoned Burt Gale. He approves petition as soon as we can start."

[Night letter from Cudworth to Fosbery, March 4, 1920, is marked Exhibit 32, and read by Mr. Choate, as follows:

Exhibit 32.

"N.L. 10:30 3/4/20

"Fosbery

"Learned incidentally of Dawson's wire when conferring with Mrs. Hulin today. Dawson does not wish Mrs. Hulin and his case to be connected with the petitions for fear of prejudice to Court. I telephoned him before your wire came and he seemed favorably impressed with what you were doing but does not consider petitions essential to his present proceedings. Loyal workers favor your activity and are anxious to start work here. Will request Dawson to wire again in morning."

Mr. WHIPPLE. Is that [Exhibit 32] from New York, Mr. Choate?

Mr. CHOATE. Well, I cannot tell from this copy. How about that, Mr. Cudworth, was this sent from New York or was it sent from Boston, this last telegram?

Mr. CUDWORTH. From Boston.

[Telegram from Cudworth to Fosbery, March, 1920, is marked Exhibit 33, and read by Mr. Choate, as follows:

Exhibit 33.

"chg 3/ 20

"Arthur F. Fosbery

"1925 Gough St

"San Francisco Calif

"Hearing yesterday postponed to thirteenth Dawson absolutely neutral about petitions.

"L. P. Cudworth

"Charge Beach 4664."

Mr. CHOATE. This Exhibit 33 is March, but the day cannot be deciphered. The substance will fix about the time.

The WITNESS. That was March 4. I think that message was sent before this one you have just read was received.

Q That is, that must have been Saturday after the Friday?

A I don't know the date of that one.

Q This letter which I show you says: "I have delayed a long time answering your letter . . ." I do not find any letter in the file and take it you haven't it. A. No. That was a hand-written letter from Mr. Cudworth sent me. I remember the substance of it; I haven't read it for three months, I think.

Q And what has become of the original? A. It has been destroyed.

Q Well, what was the substance of it, if you can remember?

A The substance was that Mr. Choate did not think that a fourth angle to this suit would be helpful at that time. It was practically the same as in one of his telegrams.

Mr. WHIPPLE. A "fourth angle," did you say?

The WITNESS. Yes.

Q Were those the words that were used by Mr. Cudworth, if you remember? A. Yes.

Q Having reference to some intervention by the field?

A Yes. The "fourth angle" would be intervention by the beneficiaries of all the deeds of trust.

[Letter from Fosbery to Cudworth, February 17, 1920, is marked Exhibit 34, and read by Mr. Choate, as follows:

Exhibit 34.

"Arthur F. Fosbery
1925 Gough Street
San Francisco, Cal.

"February 17, 1920.

"Luther P. Cudworth,
12 Brownie Street,
Brookline, Mass.

Dear Mr. Cudworth:

"I have delayed a long time answering your letter because there was not very much which it seemed advisable to say when I received it.

"I want to thank you for your prompt attention to my wire on the subject we are both so much interested in.

"I gather from Choate's answer that he did not grasp the broader phase of the situation. I did not have in mind to go into the case now in court any more than would be necessary to sweep the whole thing aside, and establish the rights of the members as the 'Court of final appeal' in all matters pertaining to our organization.

"I am enclosing a copy of the resolution adopted at a conference of members of the Mother Church residing in Northern California, which was held in Second Church of Oakland, last Saturday afternoon. The meeting was a very enthusiastic one, and the opposition to the resolution feeble and foolish.

"After the resolution was passed, the matter of the literature was brought up, and it was voted as the sense of the meeting that loyal Christian Scientists should discontinue their

subscription to all the literature issued by the Publishing Society, with the exception of the Quarterly and Mrs. Eddy's writings. Of course this motion is not binding on any of the branch churches, but I have no doubt many will act in accordance with it.

"Thank Mrs. Cudworth for the copies of the resolutions she forwarded to us.

"I have heard of seventeen churches in Oregon which discontinued their literature, six churches in San Francisco have discontinued, six in Oakland, three in Berkeley, one in Alameda, besides a few others in Northern California. I have not heard of any such action yet in Southern California.

"You will be interested to hear that three of Eustace's students were dismissed from a church in Oakland for dishonesty in making their application, and two others for not being loyal to the Manual.

"I heard that Jackson of New York had compared the court reports of the trial with the Monitor report, and had found some one hundred and twenty errors in the latter. Do you know if any of these were important or manifestly intentional?

"I think that New York has taken steps somewhat similar to ours, but I have not heard just exactly what their stand is yet.

"Sincerely yours,

"Arthur F. Fosbery."

Q That seems to conclude your correspondence with Mr. Cudworth?

A Yes.

Q We were asked to produce any correspondence you had with Mr. Dickey. Have you ever had any, other than the first telegram you sent to the Directors of the Church? A. No, none other than that telegram and the letter which was put in yesterday.

Q Which they replied? A. Yes.

Q Mr. Neal? A. No.

Q Mr. Rathvon? A. No.

Q Mr. Merritt? A. No.

Q Mrs. Knott? A. No.

Q Charles E. Jarvis? A. No.

Q Except the one that was put in yesterday? A. With that exception, yes.

Q Edward L. Ripley? A. No.

Q Lewis L. Harney? A. No.

Q Luther P. Cudworth; we have put in everything except the one you said that you haven't got? A. Yes.

Q Judge Clifford P. Smith? A. No.

Q Lee White? A. No.

Q Or the state committees on publication? A. No.

Q Martin F. Jackson or the New York Executive Committee?

A I don't think I have had any letter from Jackson at all; I don't remember any from the executive committee unless you have it there.

Q I am not sure whether there is a letter to Jackson or not.

A Yes. I did receive from the New York Executive Committee. Yes, there

was a letter to Jackson, but no answer.

Q Is that the letter you refer to [showing paper to witness]?

A No, that was a letter from our committee in California, from the chairman of our committee in California to Mr. Jackson. No, it is not there.

Q I don't find any. Here is a telegram from the New York Executive Committee; is that what you have in mind? A. No, no; it was not. No, I must have destroyed that. I thought I had that here.

Q Well, did you write it to Mr. Jackson, or receive it from him? A. I wrote it to him.

Mr. CHOATE. Is Mr. Jackson named as one of the defendants?

Mr. WHIPPLE. We asked for letters that were with him. Mr. Jackson is in New York and is not subject to the jurisdiction of the court.

The COURT. As near as I understand he said that he wrote to Mr. Jackson and received no reply.

The WITNESS. Yes.

Q State, if you can, what the substance of your letter was.

A I will have to explain that Mr. Cudworth—well, I am not sure that it was Mr. Cudworth, but somebody told me that Mr. Jackson had stated that at the proposed conference of May 6 in Chicago—which was not held afterwards—we were merely to discuss the situation and return to our own fields and work it out individually. When I heard that I wrote to Mr. Jackson stating that that was not my understanding, that my understanding was that the delegates sent to that meeting were to be empowered to act.

Q To that you received no answer? A. No answer by mail.

Mr. WHIPPLE. He says "no answer by mail." Was there any answer?

Q Well, did you receive any answer? A. Mr. Cudworth told me that Mr. Jackson agreed to my statement; that he had been mistaken in the first letter.

[Telegram from New York City Executive Committee to Fosbery, April 3, 1920, is marked Exhibit 35, and read by Mr. Choate, as follows:

Exhibit 35

"FY New York NY 330PM April 3 1920
"Arthur F Fosbery

"Chairman Care Brunswick Hotel Boston Mass "May we use chairman of your state executive committee in joint petition to intervene through attorney general of Massachusetts to be joined with Clark Eastman Bartlett of the first twelve members Hulin Andrews Skinner Robertson of the first twenty and Conant Eaton Tomlinson later members wire reply room eight thirty one thirty three West Forty Second Street New York City

"New York City Executive Committee 603PM."

Q What were you chairman of? A. Nothing. That was a mistake.

Q You were staying at the Brunswick? A. Yes.

[Telegram from Fosbery to Executive Committee, New York City, April 4, 1920, is marked Exhibit 36, and read by Mr. Choate, as follows:

Exhibit 36

"April 4, 1920.

"Executive Committee Room 831. Aeolian Building, New York City.

"I doubt wisdom of bringing suit in name of First Members and could not endorse anything without full information and consultation. Will be in New York Tuesday afternoon.

"Arthur F. Fosbery."]

Q That's everything with the executive committee that you had. Now, Herbert W. Beck, have you had any correspondence with him? A. I think there were some more letters with the Executive Committee of New York.

Q That is all I find in the file you gave me. A. I think I gave you some more.

Q There is nothing else there? A. No, there is nothing else there.

Q Well, you handed me all that you had, didn't you? A. I handed you all that I had, yes.

Q Very well, it is not here. Now, you were next asked to produce correspondence with Richard J. Davis. Who, by the way, was Richard J. Davis, or is he? A. He is chairman of the Employment and Aid Committee.

Q What was the Employment and Aid Committee? A. Why, as I understand it was a committee formed to take care of the ex-employees of the Publishing Society, who have been discharged without notice, or who have retired, resigned, from the Publishing Society.

Q When did that occur? A. I don't remember.

Q Well, some time before the writing of your letter? A. Is there a letter from me to Mr. Davis there?

Q Yes [showing letter to witness]. A. Yes, very shortly before.

Q And you say this committee was formed to take care of these people. Were they needy, as you understood it?

Mr. WHIPPLE. Well, of course he only knows what representations were made. Unless he knows it.

Q As you understood it? A. As I understood it.

Q As you were advised, were they needy? A. I don't remember that any of them were in actual want. The situation was that they had lost their employment and were without salary.

Q Were they Christian Scientists? A. That was my understanding.

[Letter from Fosbery to Davis, March 24, 1920, is marked Exhibit 37, and read by Mr. Choate, as follows:

Exhibit 37.

"March 24 1920

"Mr. Richard J Davis, Treasurer 823 Little Building, Boston

"Dear Mr. Davis:

"I am enclosing \$50, for the Employment and Aid Committee. \$25 is

from Mrs. Arthur F. Fosbery and \$25 from Miss C. Mabury, both of 1925 Gough Street, San Francisco.

"With best wishes,

AFF-mm "Sincerely yours,
enc.]

Mr. CHOATE. Was Miss Jacobs a defendant in the Harney case?

Mr. WITHINGTON. Yes.

Mr. CHOATE. I offer so much of his letter as was sent. The memorandum at the bottom is something of its own, I take it it was not on the original letter.

Mr. WHIPPLE. You have no objection to my reading it, I take it?

Mr. CHOATE. No. This letter is like the one to Mr. Davis, addressed to Grace C. Jacobs, Information Bureau, 337 Little Building, Boston.

[Letter from Fosbery to Jacobs, March 24, 1920, is marked Exhibit 38, and read by Mr. Choate, as follows:
Exhibit 38.

"March 24 1920

"Grace C. Jacobs,
Information Bureau,
337 Little Building,
Boston.

"Dear Miss Jacobs:

"I am enclosing a check for \$50 for your Bureau. \$25 of this is from Mrs. Arthur F. Fosbery and \$25 from Miss J. Mabury, both of 1925 Gough Street, San Francisco.

"With best wishes,

"Sincerely yours,

AFF-mm
enc."]

Q You spoke of a conference in Chicago May 6. Was that a conference of the delegates chosen by the various churches?

A It was to have been a conference of representatives of Mother Church members from the different states.

Q Did you attend it? A. It was called off before May 6.

Q Was a call issued for it? A. Yes.

Q Did you have anything to do with the preparation of the call?

A. Yes.

Q Have you a copy of that call?
A. There ought to be one there.

Q Is that it [showing paper to witness]? A. Yes.

[Form letter addressed to the Christian Science Churches and Societies in the United States of America is marked Exhibit 39, and read by Mr. Choate, as follows:
Exhibit 39.

"To The Christian Science Churches and Societies in the United States of America

"Dear Friends.

"The Executive Committee of New Jersey, Northern California, Oregon, and Delaware respectfully recommend that members of the Christian Science Churches and Societies or the members of the Mother Church in your state meet as promptly as possible, to consider the appointment of Delegates not to exceed five in number, who shall be members of The Mother Church, to attend a meeting to be held

in Chicago, Thursday, May 6th, 1920. For the purpose of this conference, the state of California shall be considered as though it were two states. [See Art. XXXIII Sect. 3 of the Manual.]

"Many of the states already so organized or that are in the process of organization, as a preliminary step to this end, have had the three largest Churches or a group of Churches in the state, invite the members of each Church and Society located therein, to appoint a Delegate or Representative from their membership, who is also a member of the Mother Church to meet at a designated time and place in their state for the purpose of organizing and electing an Executive Committee authorized to serve as Delegates, or for the appointment of an Executive Committee and Delegates.

"The Delegates, not to exceed five from each state, will meet in Chicago, Ill., on Thursday, May 6th, 1920, for the purpose of defending and upholding the Eighty-Ninth Edition of the Manual of The Mother Church, approved by our Leader, as the duly constituted authority for the government of The Mother Church in all its departments, and to take such steps as may be deemed wise and necessary to safeguard the rights and interests of the beneficiaries under all Deeds of Trust made or executed by our Leader, Mary Baker Eddy, and to take such other action as may properly come before the meeting.

"Will you kindly acknowledge receipt of this communication and promptly advise us what steps have been taken, or that are contemplated by your state, with a view to having Delegates elected or appointed for the purposes above indicated.

"The undersigned joint Executive Committees will gladly furnish you such information or assistance as you may desire.

"As our Leader says on page 46 of our Manual: 'Whenever God calls a member to bear testimony to Truth and to defend the Cause of Christ, he shall do it with love and without fear'.

"Respectfully,

Please."]

Q By whom was that [Exhibit 39] signed, do you know? A. That is not an original invitation; it is a copy of the invitation that was made.

Q I understand that. By whom was the original signed? A. It was signed by—I believe it was signed by the New York State Committee or by the different committees named at the top there—New Jersey, Northern California, Oregon, and Delaware.

Q And your name was among them? A. Northern California was one of them, not my name.

Q Oh, I see, you put on "Northern California," rather than your individual name? A. Yes.

Q That was sent out to all the

churches? A. I don't know how wide a distribution that had.

Q Did you have anything to do with the distribution of it?

A. No.

Q Who had charge of that? A. The New York State Committee.

Q While you had been living in San Francisco, and prior to December, 1919, had you had occasion to advise any friends or acquaintances of yours with reference to advertising in the publications of the Christian Science Publishing Society?

A. I remember one, yes.

Q Did it come to your attention that the circulation of those publications was dwindling? A. Yes.

Q What steps did you take to advise persons whom you had advised to advertise, or any other friends of yours, with reference to the condition of the affairs with reference to the falling circulation of the Publishing Society's publications?

A. I notified four of them of the discontinuance of purchase of periodicals for the reading rooms for the churches of Oakland, Alameda, Berkeley, and I believe five churches of San Francisco at that time.

Q Why did you do that?

Mr. WHIPPLE. Well, I pray your Honor's judgment.

Mr. CHOATE. We have a right to show that he did it in good faith because he thought it was his duty, and not because he did it as a part of the conspiracy.

Mr. WHIPPLE. Well, why not have him say what he said to them, and then his Honor can judge?

Mr. CHOATE. This precedes entirely what he said. I am asking him what his motive was.

The COURT. I think his motive is material.

Q You may answer it, Mr. Fosbery. You may state it in your own way, just why you did it. A. It is so far back that the matter is a little hazy in my own mind. I felt at that time that loyal Scientists should withdraw their support from the Publishing Society. I also felt that if we honestly informed our advertisers of the falling off in contributions to the Monitor it would be easier to get the advertisements back again when we regained the publications.

Q What do you mean by saying "when we regained the publications"? A. When they again became under the control of The Mother Church.

Q. You regarded them as having passed out of the control of The Mother Church? A. Yes. My theory at that time was that the Master's findings would not be materially changed by the Supreme Court. I have changed my opinion since.

Q. And did you at that time regard the utterances of these publications as

speaking authorized Christian Science truths? A. No, no.

Q How did you regard them? A. I regarded them as unauthorized literature which was contrary to the Manual for Christian Scientists to subscribe to.

Q I don't know whether it is provided by the Manual or by custom or practice, but will you state to his Honor whether or not it is regarded as a part of the duty of the loyal Christian Scientist to subscribe to the authorized literature of the Church? A. Yes, it is provided in the Manual that it is the duty of every Christian Scientist who can afford it to subscribe to the periodicals.

Q Every Christian Scientist is expected as a part of his duty as a loyal member of the Church to subscribe? A. Shall I read it?

Q Yes, if you like. A. If I can find it.

The COURT. If you want it you may put it into the record.

Q All right, if you find the requirements please read them.

Mr. WHITE. Page 44.

A Article VIII, Sect. 14:

"Church Periodicals. It shall be the privilege and duty of every member, who can afford it, to subscribe for the periodicals which are the organs of this Church; and it shall be the duty of the Directors to see that these periodicals are ably edited and kept abreast of the times."

Q Now, feeling that these were not authorized Christian Science publications, you took the step which you have described. Will you state who the four persons were whom you spoke to?

A The first was a furrier who is in the same building that my office is in. He is not a member of any local church, though he is a Christian Scientist.

Q What did you say to him?

Mr. WHIPPLE. Did he give the name?

Mr. CHOATE. He said he was a furrier.

Q What was his name, if you remember it? A. It has gone from me just at the moment.

Mr. CHOATE. Well, if you remember it give it to us later.

Mr. WHIPPLE. Has he said he was a friend?

Mr. CHOATE. A furrier.

Mr. WHIPPLE. You put the question as if he was some friend of his.

The WITNESS. He is an acquaintance of mine that I see in the building often, going up and down the elevator.

Q What did you say to him, Mr. Fosbery? A. I told him that the First Church had discontinued its literature and that other churches had done the same. That is all I remember. I must have spoken to him about his advertisement; I don't remember what I said. He told me that he had not been very well satisfied with some

little thing—with the agent there—I don't remember what it was, and that he had thought of discontinuing, anyway.

Q Do you know whether he did discontinue? A. No, I don't know.

Q Now the next one, who was he? A. The next one was a clerk in a gents' furnishing store. I had spoken to him two or three times before his firm advertised, telling him that I thought his firm ought to advertise in the Monitor; they had a great many Christian Science customers, and I had an account there. I felt I had been instrumental in securing that advertisement. He told me when I spoke to him about the—

Q State, first, what you said to him, if you can remember.

A I said I thought the advertisement ought to be withdrawn.

Q Did you give him your reason? A. The reason of the cancellation of the literature.

Q Well, as near you can remember it, how you put it to him.

A Well, I don't remember any more than that.

Q You mentioned the fact that the churches had cancelled?

A Yes.

Q Now the next one. A. Well, that is not all of that—

Mr. WHIPPLE. Did he give this gentleman's name?

Q Did you give his name, Mr. Fosbery? A. I didn't give his name. Is it necessary to give the name?

Q I think it will do no harm. A. Is it necessary to bring the names of these firms into the proceedings?

Q Well, I don't believe there is any objection. You better give the names. A. This was the firm of Hastings Brothers.

Mr. WHIPPLE. But the clerk's name?

The WITNESS. Embree.

Q Now, go ahead; please tell the rest of it. A. Mr. Embree said that they had put the advertisement in at his request and he would ask them to take it out.

Q Was he a Christian Scientist? A. Yes. The next day I was in the store purchasing something and he said that he had changed his mind about that; that he felt he would not ask them to take it out. I said I thought it was a matter of honesty to inform them of the falling off in circulation, and, moreover, that honesty would help to regain the advertisement after we again obtained control of the periodicals.

Q Now, the next one. A. He didn't agree with me on that point. He said that he would not ask them to take it out and I didn't urge the matter.

Q Now, the next one. A. The next one was a florist.

Mr. WHIPPLE. I beg pardon?

The WITNESS. The next one was a florist.

Q His name? A. Podesta and Baldocchi.

Q What did you say to him? A. I told him that a number of churches had cancelled their subscriptions to the periodicals. He asked me if I thought the advertisement would become unpopular, and I said it might. That is all the conversation with him.

Q The next one. A. The next one was a book dealer, John Howell. I don't remember my conversation with him very well.

Mr. WHIPPLE. What was his name—John Holland?

The WITNESS. John Howell, yes; except that I spoke about the cancellation and that I thought Christian Scientists ought to withdraw their support of the Publishing Society. I believe I made that statement. I don't remember making it but that was my attitude of mind at that time.

Q Now, that is all of that class of persons to whom you spoke?

A Yes. I may have sent word to another man, a furniture dealer. I don't remember of sending word to him but I remember that he sent word to me and asked me to explain why I thought his advertisement ought to be withdrawn, and I didn't answer him. I thought he knew of the cancellation and that was enough.

Mr. CHOATE. March 8, 1920. Mr. Fosbery wrote to the Christian Science Publishing Society.

(A copy of this letter. Mr. Fosbery to Christian Science Publishing Society, March 8, 1920, is marked "Exhibit 40 F" and is read by Mr. Choate as follows:)

(Exhibit 40 F)

March 8, 1920.

The Christian Science Publishing Society,
Boston, Mass.
Gentlemen:

Last December we wired you to cancel our subscriptions to the periodicals which you are publishing. Please give our request your earliest possible attention as we do not desire to receive literature published under the present management.

Yours truly,

Q That you signed? A. Yes.

Q Do you know whether your wife's name was also signed to it? You use the plural. A. Yes, we both signed it.

Q I think I asked you yesterday, what was the occasion of your coming to Boston, and you came here, you said, as a delegate?

A Yes.

Q A delegate to what? A. A delegate to take such action as seemed advisable in conformity with the report of the Second Oakland Conference.

Q When did you come to Boston? A. I arrived here on March 13th.

Q And have you remained here since? A. Not permanently. I have been in the East since permanently.

Q Now, why should you come to Boston? A. Well, I came to Boston to get some line on the Hullin suit

efore going on to New York; I was directed to go to New York by the—
Q That is, the Hulin suit was the one which Mr. Dawson and I were counsel in? A. Yes.

Q Then you went to New York to confer with persons there?

A. Yes. I had a letter from our chairman to Mr. Jackson of New York.

Q That is, they were your credentials? Your letter was from Mr. Peck? A. Yes. This was not my credential, no. It was a letter asking the New York State executive committee to call a conference of the churches, or call a conference of representatives of States, I should say.

Q Now, have you been in communication with the directors since you have been here? A. No.

Q Haven't seen any of them? A. Yes, I have seen them all.

Q Well, where? A. I met Mr. Rathvon and Mr. Neal accidentally in the Church. We did not discuss the suit; and I have seen the others in the court room here.

Q Have you seen them at any other places than those you have just described? A. Not to my recollection.

Q Or had any other communications than those that we have already offered to the court? A. No.

Q Or with Judge Smith? A. No.

Q Or with their counsel or anybody connected with them? A. I saw Mr. Buffum. I did not discuss my position as a delegate at all with him.

Q Mr. Buffum's name has not been mentioned before— A. No, it has not been mentioned.

Q Will you state to the court who he is, and in what connection?

A. Well, I don't know. I understood that he was one of the attorneys connected with the directors' attorneys.

Q In whatever you have done, as has been shown to the court, what has been your motive, Mr. Fosbery? A. To uphold the Manual of The Mother Church, that it should remain as the authority and government of our Church.

Q Did you believe it was being attacked? A. I did.

Q And why is the Manual of importance to you? Will you describe to His Honor what that means to a Christian Scientist?

A. Well, our Manual is the authoritative—contains the By-Laws and the rules of conduct for our Church. It is written by Mrs. Eddy; and without the Manual as a protection for the field it would be at the mercy of the officers in Boston, but the Manual controls not only the members but the directors and the trustees of the Publishing Society, and all people connected with our Church.

Q You believe it to be the supreme law of the Church? A. Who are loyal Christian Scientists.

The COURT. I don't get your answer.

The WITNESS. Who are loyal Christian Scientists.

Q Have you had any other purpose, in all that you have done and all the correspondence that you have carried on, than in the exercise of your faith as a Christian Scientist— A. No.

Q —to protect it in all ways you could? A. No.

Q Have you entered into any conspiracy with any person to interfere with the conduct of the litigation between the trustees and the directors? A. No.

Q Or to hamper or embarrass them in any way? A. No.

Q Or to interfere in any way with the administration of justice.

A. No.

Q Mr. Nash calls to my attention the fact that you have visited the Attorney-General? A. Yes.

Q In whose company? A. With Mr. Blakeley of New Jersey, Mr. Bangs, Mr. Hemingway—

Q For what purpose? A. —and Mr. Morse—to consult with him about taking action in the present case, of a bill of information against the trustees.

Q On your visit to the Attorney-General was any counsel with you?

A. No. Mr. Morse was there as counsel for Mr. Bangs and Mr. Hemingway.

Q That is, Senator Morse, who represented Mr. Bangs and— A. Yes.

Q Now, have you allowed your name to be used in any of these petitions for intervention or informations to the Attorney-General? A. My name was used on one. Dr. Meek's name should have been there, but my name was there instead.

Q Do you remember how it came about that you went to see the Attorney-General, at whose suggestion you went? A. Yes; it was at Mr. Dawson's suggestion. He said the Attorney-General had made the request, or said that he would like to see the delegates from the different States.

Q And it was in response to that that you went? A. Yes.

Q Now what is your intention as to your future conduct, Mr. Fosbery—if the court allows it?

The COURT. There was a little noise; I didn't get your question.

Q I say, what is your intention as to your future conduct—if the court permits it? A. To support the suit now entered into by the Attorney General.

Q Well, with reference to your own action? A. I have no other purpose than that—than to continue whatever legal means seems wise and right to have the Manual of The Mother Church upheld as the authority and government of our Church, and, also, which is included in that, to have the office of director recognized as in authority over that of trustees of the Publishing Society.

Q That is, you believe that to be Mrs. Eddy's word? A. I believe that is according to the Manual.

Q And that is the belief entertained generally by loyal Christian Scientists?

Mr. WHIPPLE. Just a moment.

A. That is my understanding.

Mr. WHIPPLE. Just a moment as to that.

The COURT. Oh, he can't know that.

Q Well, that is your understanding? A. That was my understanding.

Q With reference to the litigation, if the Attorney-General sees fit to take measures as he indicated yesterday, what is your purpose—to leave that in his hands? A. Yes.

Q To be guided by him? A. Yes.

Q Have you had at any time any evil or malicious purpose to injure these trustees or the property in their hands? A. No.

Mr. WHIPPLE. Just a moment.

The COURT. I suppose "malicious" means not the ordinary malice, but simply unlawful? Mr. Choate, I am asking that as a question. Do you mean by the word "malicious" simply unlawful, contrary to law, or spite or ill will?

Mr. CHOATE. Spite or ill will.

The COURT. Very well; you may ask.

A. No, I have not.

Q Or have you had any other purpose than so far as lay in your power to preserve the traditions and property of the Church?

A. No.

(Short recess.)

Hearing resumed at 11:35

ARTHUR F. FOSBERY, resumed
CROSS EXAMINATION

Q (By Mr. Whipple) Mr. Fosbery, I understood you to testify that you were here in Boston in March 1919 when the bill was filed by the Trustees against the Board of Directors, is that correct? A. I was either here or arrived a few days afterwards.

Q Did you have an interview or interviews with the Directors about the matter? A. No.

Q Or anybody else? A. Why, I don't know what you mean by "interviews with anybody else."

Q I mean just what I say, interviews with anybody else besides the Directors. A. I talked with different people about the situation, yes.

Q With whom? I mean here in Boston, after the bill was filed when you came here? A. I talked with Mr. Dittmore, I think, about it.

Q Any one else? A. I think I talked with pretty near all my acquaintances in Boston, off and on.

Q Can you name some of them? A. No, I cannot pick out certain individuals and say I did talk with those or didn't. I talked generally about it.

Q Can you name any one you talked with about it? I mean after the bill was filed. A. Yes, I talked with Mr. Turner.

Q You talked with Mr. Turner? A. Yes, Mr. Turner.

Q Did Mr. Turner tell you anything that he had heard from the Di-

rectors? A. No. Not to my knowledge.

Q Or what their position was, or what were their views? A. Not to my recollection.

Q Did anybody else? A. No, I have no recollection of anybody giving me any communication from the Directors.

Q Or any statement as to how the Directors felt about the bill? A. No.

Q When had you been here before the bill was filed? A. I think I was here the year before.

Q But not for a year? A. Not for a year, to my recollection.

Q Hadn't been in communication with the Directors during that time or any of them? A. No.

Q Can you tell when you arrived here? I mean on this occasion. A. On this last occasion?

Q Yes, that is, on the time the bill was filed, either just before or just after? A. It was about that time, but I don't know the date.

Q Well, when did you first see a copy of the bill? A. Well, it was in March, shortly after it came out.

Q Where did you get it? A. I don't recollect. I think I got it through the mail.

Q Got it through the mail? A. I think so.

Q From whom? A. I think it was forwarded back from San Francisco.

Q It wasn't filed until the 25th of March, so if it was sent to you in San Francisco and returned, you didn't get it in March, of course? A. No; probably not; I probably got it in April. I must have seen a copy of it here, but I have no recollection of it.

Q Did you know that the Trustees had had it printed? When did you first learn that they had had it printed and sent out to the field? A. I don't remember that.

Q What? A. I don't remember that.

Q From whom did you learn it? A. I don't remember that. It was over a year ago.

Q Yes, but you have testified to some things some time ago. You cannot tell who told you or how you learned that the Trustees had printed the bill and had caused it to be printed and sent out? A. No, I cannot say definitely. I could say who it might have been but that would be rather guessing at it to say who first informed me of it.

Q I would like to have you give me your best recollection if you have any recollection. A. It is quite possible that Mr. Dittmore informed me; that I could not swear to.

Q That is, that it had been printed and sent out by the Trustees? A. Yes.

Q Did you have one while you were in Boston—one of the printed copies? A. Yes.

Q Do you know from whom you got it? A. No.

Q You cannot tell? A. No.

Q Did you get it from any one else

except Mr. Dittmore? A. I may have, yes.

Q But you were friendly with Mr. Dittmore, were you not, at the time? A. Yes.

Q But at the same time that the Directors attempted to remove Mr. Rowlands they attempted to remove Mr. Dittmore? A. Yes.

Q You knew that? A. Yes.

Q Your friend? A. Yes.

Q The man with whom you sympathized? A. Yes.

Q You went with him to the office of his counsel, did you not? A. Yes.

Q And talked with him about the matter? A. Yes.

Q But you can't remember any one else that you talked with about it at that time or received information from? A. No, I don't remember any one else at that time.

Q But I understand that at that time while you were here in Boston you made up your mind that if the Trustees' position as set forth in the bill was sustained that you would not subscribe for any of their literature? A. Yes.

Q How long were you here in Boston? A. Two or three months.

Q Two or three months? A. Yes.

Q What were you engaged in? A. Watching the suit.

Q What? A. I was engaged in watching the suit; came to court in some of the hearings.

Q You had no other business here except watching the suit? A. No, watching the progress of the suit.

Q What is your business? A. I am a Christian Science practitioner.

Q In California? A. Yes.

Q Happening to be here when the suit was brought you stayed until the hearings were completed, did you? A. No, I didn't stay until the hearings were completed.

Q You attended the hearings before Judge Dodge? A. I attended a number of hearings.

Q And stayed here in Boston with no other business than simply to watch the suit? A. That is all.

Q And attended the hearings? A. I did not attend all the hearings, no. I read the accounts in the papers afterwards, most of them; I attended a few of the hearings.

Q Were you there when Mr. Cudworth testified, for instance? A. No.

Q You read in the Monitor what he testified to? A. Yes, I read that when I was in San Francisco.

Q Can you tell us when you went back to San Francisco—give us the date approximately? A. Shortly after the annual meeting.

Q When was that? A. That was in the fore part of June 1919.

Q But the hearings didn't begin until quite a while after that, did they, before Judge Dodge? A. Oh, there

were some hearings before that; there was the contempt proceeding.

Q Oh, you were here while the contempt proceedings were going on? A. Yes.

Q Also when the hearings proceeded before Judge Dodge? A. Yes.

Q You went back before the first of July? Is that right? A. That is my recollection; yes.

Q And you had not met Mr. Cudworth in the meantime? A. Not to my recollection.

Q Or any one who knew him? A. No.

Q Who were the other people that you talked with here while you were here other than Mr. Dittmore, about this suit or case, especially prior to April 4th? A. I cannot remember that.

Q Did you see the Directors while you were here? A. No.

Q You saw them in the court room, of course? A. Yes.

Q But didn't talk with them? A. I don't remember of having spoken with any of them.

Q Or to Judge Smith? A. No. I met Judge Smith at the church one day, but didn't talk with him.

Q During that whole three months? A. No.

Q Or with the Directors, nor anybody else connected with them or associated with them? A. Not to my recollection.

Q Nor with their counsel? A. I spoke to Mr. Doorly in the church after the annual meeting and congratulated him on the harmonious meeting they had had.

Q I was speaking of the Directors and the people under them. A. Mr. Doorly was chairman at that time.

Q Mr. Doorly had been appointed—A. He was President of the Church.

Q And appointed by the Directors, you understood? A. Yes.

Q So that he was the President of the Church by appointment of the Directors? A. Yes.

Q But neither Mr. Smith nor any of their counsel, counsel for the Directors, did you talk with? A. No.

Q Then having given thought to things which you had seen and heard, you at some time decided to telegraph Mr. Cudworth? A. Yes.

Q Now, had you corresponded with anyone else in Boston after going home, after that stay here? Or, had you received letters, telegrams, or communications of any sort from anybody in Boston? A. No, not to my recollection, except that I wrote one letter to Mr. Dittmore and received an answer.

Q That is the only one? A. That is my recollection. I received a letter from Mr. Swan later on, which I did not answer.

Q You said that you had made up your mind in April, as soon as you read the bill, that you would never subscribe for the papers, if the posi-

tion of the Trustees should be sustained by the court. Have you changed that determination? A. No.

Q. That is the way you have felt ever since? A. Yes.

Q. Now, you said at one time that you did not believe that the Supreme Court would change the Master's report, and that the decision would be favorable to the position of the Trustees. You so testified this morning, did you not? A. Yes.

Q. When was that? A. When I read the report of the Master's findings in our local paper on December 20 or 21, 1919.

Q. You are not a lawyer? A. No.

Q. And never have studied the profession? A. I was a Justice of the Peace once for a short time.

Q. But you did not study at any law school to prepare yourself for that judicial office? A. No, no.

Q. But when you read the Master's report you believed that the Supreme Judicial Court in Massachusetts would sustain it? A. I thought that it would sustain it without any very material change.

Q. That was your own thought about it? A. That was my own opinion about it.

Q. Uninfluenced by the opinion of any lawyer? A. I don't think anybody else influenced me in that.

Q. Now, how long did you entertain that belief, if you have ever given it up? I think you said you had; you now thought that the Supreme Court would not sustain the report. When did you change that belief? A. I couldn't give the exact date. I think that the new evidence that was attempted to be offered in the Hulin suit helped to change that.

Q. Were you here at the time that that was done? A. I think I arrived after that had started. I am not quite sure.

Q. Therefore, until you got here and heard of the new evidence which was offered in the Hulin suit—which, by the way, did not accomplish anything in the way of intervention, you remember—that gave you a belief, or started your mind toward a belief, that the Supreme Court would change the Master's report. Was that it? A. I felt all the time that there was some other way, that if the field would come in they could change it.

Q. If the field should get in? A. Yes, the field at large. If the beneficiaries of all the deeds of trust should get in.

Q. But you entertained the opinion all the time that unless the field got into it that report would be sustained by the Supreme Court? Is that correct? If not, when did you change it?

A. Yes, that was my idea along there. I can't say the exact date I changed that.

Q. But it was after you came to Boston. I mean, after you were fully convinced and very certain in your opinion that the Supreme Court would

not sustain the report. Is that correct?

A. Why, I could not answer that question. I have not given much thought to what the Directors would do—

Q. Yes, but you testified— A. I haven't given much thought to what the final result would be on the finding, because I felt that we could in some way legally enter the court and make some change in that.

Q. That you could legally enter the court? A. Yes, legally enter the court.

Q. But of course you recognized that if the field discontinued the subscriptions very generally, and advertisers took out their advertisements, that would tend to weaken the Trustees' position?

A. It would withdraw financial support from them.

Q. And would weaken their position? (Witness hesitates.) Weaken their position? A. By withdrawing financial support from them.

Q. Yes. You recognized that that would be the consequence if you withdrew the substantial support, that that would be a measure to weaken the Trustees' position? A. It would leave them less money to spend on law suits.

Q. Spend on law suits! And if you could get all their subscriptions cancelled, why, then, they would be helpless, wouldn't they?

A. They claimed not.

Q. What? A. They claimed not.

Q. Well, you thought so in spite of their claim, did you not?

A. Yes; but I did not attempt to get all the subscriptions cancelled.

Q. No; only a part of them. You only attempted to get a part of them and not all of them, cancelled. Is that right? A. I—

Q. Pardon me.

Mr. CHOATE. No, no; let him answer.

Q. Pardon me. Isn't that right? Isn't that correct?

The COURT. I think he can well answer that question yes or no.

Q. You only tried to get a part of them cancelled? A. Yes, where it was my affair to act.

Q. Because the field was too big for you as one man to cover the whole field and get them all, wasn't it? A. I thought the rest of the field would act on its own initiative and I did not need to go to them; I did not attempt to do that.

Q. Well, you communicated to the rest of the field, didn't you? You kept in touch with New York and with Chicago and with Boston, to see what they were doing? A. I was not in touch with New York until I came on here.

Q. Well, you got in touch with them when you came on here? A. Yes.

Q. But you were in touch with Chicago? A. But I didn't get in touch with New York in regard to the cancelling of subscriptions.

Q. Weren't you in touch with Chicago? A. No, I was not.

Q. Weren't you? Didn't you have any communications with Chicago?

A. No, not to my recollection.

Mr. WHIPPLE. Mr. White, will you let me have the Harney telegram, the copy of it?

Mr. WHITE. Which one?

Mr. WHIPPLE. The first one he sent out, recommending the cancellation, discontinuance.

Mr. WHITE. I think that took a somewhat slightly different form to some people.

Mr. WHIPPLE. I would like a copy of the Ross one. Have you that, Governor? Will you be good enough—

Mr. BATES. Which one?

Mr. WHIPPLE. The copy of the telegram to Ross, the Harney telegram.

Mr. BATES. We haven't a copy, except the copy which we submitted to you, Mr. Whipple.

Mr. WHIPPLE. Well, let us take a copy of that, will you? The original is the one—or the copy from which you gave us a copy.

Mr. BATES. I think Mr. White has it.

Mr. WHIPPLE. Is Mr. White counsel for Mr. Harney?

Mr. WHITE. Yes.

Mr. WHIPPLE. Yes, I remember.

Q. Did Mr. Ross show you the copy of the Harney telegram? A. Yes.

Q. And that is before you had undertaken any activities or correspondence with Mr. Cudworth? A. Yes.

Q. Although you had been, so to speak, sort of tilling the ground in the west, with a view to having the field take some definite action if the decision of the court should be adverse to the Directors, had you not? A. No.

Q. Had not? Oh, you had not been doing anything at all?

A. I had gotten as far as writing an invitation to the churches of northern California to meet in a conference to discuss the question.

Q. You had gotten as far as that? A. I had gotten as far as that.

Q. Before the Harney telegram? A. Yes.

Q. You had already sent out an invitation to the churches to come and discuss the question? A. No, I had not.

Q. Oh, had not? A. No.

Q. Well, you had not done a thing, then, before the Harney telegram? A. I had written an invitation.

Q. But you had not sent it out? A. No. I couldn't send it out without the agreement of three churches.

Q. So that when you saw the Harney telegram you had not actively done one thing, either to urge the Trustees to resign or to intervene in a law suit, or to take up cudgels in behalf of anybody? A. No, because the report in the paper came on a Saturday.

Q. I am not asking that. A. I think I have a right to answer that.

The report of the Master's findings came either on a Saturday or a Sunday, and I saw the Harney telegram Monday morning.

Q In other words, you had not had time to get to it? A. I had not had time to do anything except write the invitation.

Mr. WHIPPLE. May I now have the copy of the Harney telegram?

Mr. WHITE. I can't find it. It might be well, Mr. Whipple, for you to get all those Harney telegrams in a bunch from the Telegraph Company now, so that we would have them.

Mr. WHIPPLE. I think that is right.

Mr. WHITE. I have no copy.

Q You knew who Harney was, didn't you? A. Yes.

Q But you didn't know who Cudworth was? A. No.

Q Who was Harney, as you knew him? A. I understood that he was secretary to Judge Smith.

Q How did you happen in Ross' office? A. I went in to discuss the invitation I had written with him.

Q That is, you had read in the San Francisco papers a summary of the findings of the Master? A. Yes.

Q In the final report? A. Yes.

Q Or what was supposed to be the final report. And you saw that they were, or, at least, you thought that they were pretty completely against the Directors? A. Yes.

Q And in favor of the Trustees. Then you sat down to write an invitation to the churches of northern California to meet and see what you were going to do about it? A. Yes.

Q But you didn't get it completed or framed, and you went around to Peter Ross Monday morning to see what he was going to do about it. Is that correct? Is that a correct chronological statement of your activities? A. All except the last statement.

Q That is, you did not go around to see what Peter Ross was going to do about it? A. No.

Q What did you go to see him for? A. To talk the matter over with him.

Q Well, talk the matter—talk what matter? A. The matter of my invitation.

Q Of your invitation to the churches? A. Yes.

Q And while there showing him your invitation he showed you the Harney telegram? A. It arrived while I was talking to him, and he showed it to me.

Q Now, Peter Ross was what? A. He is the Committee on Publication for Northern California.

Q And as such in communication with the Committee on Publication here in Boston? A. Yes.

Q Who was Judge Smith? A. Yes.

Q Who was also counsel for the Directors? A. Yes.

Q And you understood that Peter Ross was under and received directions from Judge Smith? A. To a

certain extent, yes; not completely. He was appointed by the Readers of our churches, and he is paid by the Christian Scientists of Northern California.

Q And then the Committees on Publication work together and under the direction of Judge Smith? A. I don't know how much they work together.

Q And you knew Judge Smith spoke with authority for the Directors? A. Yes.

Q Had you met him? A. Judge Smith?

Q Yes. A. Oh, yes; I know Judge Smith.

Q When? Where did you meet him? A. I met him at different times. I have not spoken to him except to say "Good-morning" since sometime last year in the church.

Q But you knew his relations to the matter? A. Quite well, yes.

Q Now, while you were here in Boston did you write—I mean, last year—did you write to people in the west about the suit here and about the position of the Directors and the Trustees, and your views? A. Yes, I have no doubt I did.

Q How many people did you write to? A. Oh, I don't remember.

Q Well, tell us some that you remember. A. I sent out a great many clippings.

Q Yes. A. I wrote to the President of our church.

Q Who is that? A. Miss Vrooman.

Q Have you a copy of that letter? A. I don't know whether I have or not. I had it not long ago. I am not sure whether I destroyed that or not.

Q How long ago did you have it? A. Oh, within the last few weeks.

Q Well, have you destroyed some of your papers within the last few weeks? A. Yes.

Q How many? A. I don't know. I—

Q Where were you when you— Mr. CHOATE. Let him finish the answer, please.

Mr. WHIPPLE. All right.

A (Continued) I don't know how many I destroyed. I had a great many personal letters with me, and I think I have destroyed most of them,—any that were not important.

Q That is, letters which you had received? A. And copies of my letters I have destroyed, and copies of telegrams.

Q Well, how many letters have you destroyed that you wrote while you were here last year about the law suit and the positions of the Directors and Trustees? A. I don't think I had any with me except the Vrooman letter.

Q Didn't you write to other people during that period explaining about the situation here? A. Yes.

Q How many others that you can think of? A. Why, I couldn't tell. I suppose I must have written to any-

where from ten to twenty.

Q Can you tell the names of those people? A. I can tell you some of them.

Q All the letters reflected or stated the position which you took in the controversy in favor of the Directors, did they not?

A Not in favor of the Directors, no; in favor of the office of the Board of Directors; of the office.

Q In favor of the office of the Board of Directors? A. Yes.

Q And against the Trustees' position? A. Yes.

Q And, therefore, in favor of the Directors' position in the litigation? A. Yes.

Q And not in their favor personally, but in favor of their legal position? A. Yes.

Q And you wrote some ten or twenty letters to that effect?

A I wrote some ten or twenty people.

Q Yes, ten or twenty people. Friends of yours? A. Yes.

Q So as to give them your views and notions as to the right and merit of the legal controversy? A. Yes.

Q That was pending? Then I think you told us of some comment you made on the Harney telegram when you saw it? A. Yes.

Q Did you not? A. Yes.

Q Would you be good enough to repeat that,—what you said to Peter Ross about it? A. I said that Harney was a fool.

Q Harney was a fool? A. Yes.

Q Did that end there, or did you amplify or explain it to him?

A I don't remember the rest of my conversation in exact words. I stated that the field would naturally discontinue its literature anyway, and for that reason it was absurd for him to tell them to do so; and also from his position as—well, I don't know whether I mentioned on account of his position, because of course Mr. Ross understood that.

Q But you meant it? A. I meant it. I meant on account of his position in Judge Smith's office he was a fool for sending out such a telegram.

Q Well, why from Judge Smith's office? A. Because Judge Smith was counsel for the Directors, and the Directors were enjoined.

Q You knew that? A. I knew that.

Q And, therefore, you thought that a man who was in Judge Smith's office was a fool for sending out such a thing? A. Yes.

Q Because you knew very well, or thought, that was a violation of the injunction? A. I thought so, yes.

Q And what you meant by saying that Harney was a fool, was that his actions would get the Directors into hot water, difficulty? A. Well, it would get himself into hot water. I did not believe that the Directors had anything to do with it.

Q Oh, you thought that the Directors had not anything to do with it?

A. Yes, I was quite confident, quite sure of that.

Q I see. Although it came right from the private secretary of their counsel, you thought that the Directors didn't have anything to do with it? A. Yes.

Q That is, you could size up the situation way out there in California, on seeing a telegram from Harney, the private secretary of the counsel of the Directors, suggesting that you cancel, that now was the time to consider cancelling subscriptions to the publications, and you said that Harney was a fool, and you were very sure that the Directors—and, of course, Judge Smith—did not authorize it?

Mr. CHOATE. Pause a moment, please. A. I was quite confident—

Mr. CHOATE. That is pure argument. The question has been answered two or three times. He has told exactly what his belief was and exactly what he said, and this is just reiteration and argument, and a little more embroidery on it.

The COURT. I thought it was an attempt to enlarge this ground.

Mr. WHIPPLE. And to enlarge the admission.

The WITNESS. I can answer it. I was quite confident at the time in my own mind that neither Judge Smith nor the Directors had anything to do with the telegram, and Mr. Ross agreed with me.

Q Were you acquainted with Harney? A. I met him yesterday in the court room and he reminded me that I had a talk with him.

Q Were you acquainted with him? A. I had had one talk with him one time. I didn't know—I was not sure whether he was the man I had talked with or not until he told me so yesterday.

Q Now, was that after you decided that he was a fool, or that you said he was a fool? A. No; that was before.

Q Before that. You have not talked with him since? A. No.

Q But the foolish thing about it was not that the suggestion should be made that subscriptions should be cancelled, but that it should appear to come from the Directors? A. Both were foolish, because the first was unnecessary, and the second was, to my mind, a violation of the injunction.

Q But you have been suggesting cancellation, haven't you?

A. Oh, yes, I have advocated cancellation in our own church.

Q And urged it and advocated it? A. In our own church.

Q Because you were not under the injunction, or in Harney's place? A. No; I was not under the injunction.

Q So that the foolish thing was not in what he said but in the position from which he said it? A. Exactly.

Mr. WHIPPLE. Governor Bates, haven't you a copy of the Harney telegram?

Mr. BATES. No, we have no copy, never have had.

Mr. WHIPPLE. I thought you said you sent me a copy of the telegram. Pardon me. I thought you said a moment ago that you did have one.

Mr. BATES. What I stated, or intended to state, was this: that immediately upon discovering this we sent you a copy of what we understood was the substance of the telegram. We never have had any copies of the telegram from Mr. Harney or from anybody else. But we have no doubt that that was the substance of it.

Q That was a Monday you said that you saw the Harney telegram.

Mr. WHIPPLE. (Addressing the Clerk of the Court.) May I get the day of the week, Mr. Flynn?

A. Monday, December 22, my understanding is.

Q Monday, the 22nd. Then did you have some interviews with people out there about taking a hand yourself, or the church, or some of the churches, during that week of the 22nd? A. We had a Board meeting, which I remember—well, it may have come on the Sunday night—we had a Board meeting, of First Church of Christ, Scientist, in San Francisco. I am a member of the Board. That meeting took place either Sunday the 21st, or Monday or Tuesday following, at which I presented the invitation to be sent the churches and moved that we consult with two other churches and send it out.

Q Now, during that week, did you receive any word or communication from anybody in Boston, except Mr. Cudworth's reply to your telegram of December 30,—no, that would be the answer. A. Not to my recollection.

Q I note from the telegram that has been put in, December 22, Exhibit 10, that on the very day that you saw the Harney telegram you sent, in behalf of yourself and your wife, a cancellation of your subscriptions to the periodicals? A. Yes.

Q How soon was it after you had announced to Ross that Harney was a fool that you sent the telegram doing the very thing that he suggested? A. I think it was within—

Mr. CHOATE. Pardon me. Mr. Fosbery has not said he was doing the very thing he suggested. He has not said what he suggested.

Q Well, isn't it doing the very thing that he suggested,—that is, the cancellation of subscriptions? That is what the Harney telegram suggested, wasn't it? A. Yes.

Q And I now ask you, how soon it was after you had said of Harney that he was a fool, that you sent a telegram doing the very thing he had suggested in his telegram? A. A few hours afterwards, the same day.

Q A few hours afterwards. Now, on Saturday previous you had read the Master's report, or the excerpt from it, and had reached your own conclusion as to its unfavorable

character to the Directors? A. I don't know how long it took me to make up my mind on that, or whether it was a Saturday or a Sunday that I read that. I am not sure.

Q Well, it had been a day or two days before the time you saw the Harney telegram? A. One or two days before, yes. But before writing that telegram I had written that invitation in which the question of the cancelling of literature was to be discussed.

Q That very thing was to be taken up? A. Yes; before I saw the Harney telegram.

Q So that the basis of your uncomplimentary remark in regard to Harney was that, instead of his taking it up and suggesting it, he ought to have left it to gentlemen like you? A. He ought to have left it to the field, because they were going to do it anyway.

Q And gentlemen like you to take it up? A. Yes.

Q Well, you claim the honor of being the first mover about it in California? A. No, I do not.

Q Well, did anyone else frame any invitation to the churches before you did? A. I don't know.

Q As far as you know? Well, as far as you know, you had the honor of framing the first invitation to the churches to assemble for this purpose? A. Certainly. My invitation—

Q Pardon me. Will you answer the question? A. My invitation went no farther than my Board at the Board meeting, and it was turned down.

Q Well, that is right. But you have the honor of being the first one to frame one? A. I don't know about that.

Q A movement which had for its purpose the cancellation of subscriptions. That is correct, isn't it? A. No.

Q I thought you said that you already had drawn an invitation for the churches to assemble for the very purpose of the Harney telegram? A. No, I didn't say so.

Q Oh, I beg your pardon. I thought you did. It was for the purpose of considering cancellation? A. It was for the purpose of considering the situation in Boston, and it said, among other things, the question of cancellation of literature shall be discussed.

Q That is it. Now then, did you talk over with anyone sending this telegram to Cudworth before you sent it (showing paper to witness)? A. No.

Q Did you receive any letter or telegram, or message of any sort, from Boston or anywhere else, in reference to Cudworth before you sent it? A. No.

Q Not one? A. No.

Q You are quite sure you can't be mistaken about that? A. No, I can't be mistaken about that, because I have had no other correspondence with him.

Q Now, you wrote, "San Francisco, California. 11.03 A. M., December 30. Luther P. Cudworth, 12 Brownie Street, Brookline."—By the way, how

did you know his address? A. I got it out of The Journal.

Q What? A. Let me see that telegram, please. Is that the first telegram I sent him?

Q Well, you said it was. Why did you take back the suggestion that you got it out of the Journal?

Mr. CHOATE. He hasn't taken it back.

Mr. WHIPPLE. I thought he had.

Mr. CHOATE. No.

Mr. WHIPPLE. Had you seen to it—

Mr. CHOATE. Pardon me a moment. He is answering a prior question, if you will let him.

Mr. WHIPPLE. Pardon me; he has answered it; he said he wanted to look at the telegram.

The WITNESS. I believe that my wife gave me that address, 12 Brown Street.

Q What? A. I think that I got the address from my wife, or from the Journal, I don't remember which.

Q Well, had your wife been in communication with Cudworth? A. My wife had written him a letter after his testimony, congratulating him on his stand, and had received an answer from him.

Q But you haven't got that letter, have you? A. No. I don't remember anything about it except that she received it.

Q What? That is the way you got his address— A. I am pretty sure that is the way.

Q —was that your wife had been in communication with Cudworth?

A She had written him one letter congratulating him on his stand at the time that he took it.

Q How did she know his address, at 12 Brown Street? A. I don't know.

Q Is your wife here? A. No.

Q You cannot explain how she knew the street address of Cudworth? A. No.

Q But you had it already; you notice it is in your telegram? A. Yes.

Q Well, now, I asked you, you see, before I put that question, as to whom you had communicated with in Boston, and I meant directly or indirectly, or had any communication with Cudworth, because I had in mind that you had given his address, and I wondered how. You remember you said you had not communicated—

Mr. CHOATE. Just a moment. Is that a question?

Mr. WHIPPLE. I will waive it.

Mr. CHOATE. Then I ask that it be stricken out of the record.

Mr. WHIPPLE. No; I will take your Honor's direction about it.

The COURT. It may go out of the record.

A I have no recollection how I obtained the address; I have stated the two ways in which I might have obtained it.

Q But you have no definite recollection about it? A. No.

Q Except that it now appears that your wife had been in correspondence to some limited extent, at least, with Cudworth? A. Yes.

Q Had you forgotten that when you were inquired of by Mr. Choate as to the correspondence with Mr. Cudworth? A. Yes, I had; it was quite immaterial.

Q And you never thought of it until this question was put to you, namely, that your wife and Cudworth had corresponded? A. It never occurred to me, no.

Q Now, after these telegrams were interchanged between yourself and Cudworth you came on to Boston at some time? A. It was some time after that, yes.

Q When was it? A. The 13th of March, 1920, I arrived here.

Q And entirely with regard to this litigation, was it not? A. Yes.

Q Did you see Cudworth? A. Yes.

Q Confer with him frequently? A. I saw him several times.

Q Where? A. I saw him at his office.

Q Where is that? A. In the Little Building.

Q What was his office? A. Practitioner's office, Christian Science practitioner's office.

Q In the Little Building? A. Yes.

Q I thought there was some committee's headquarters there?

A So did I; I went to the door and found it locked.

Q I see. You thought that was a committee's office? A. No; I thought there was an information room, I didn't know anything about it, I went to see what it was.

Q You had gathered from your telegrams back and forth that they had started an information bureau? A. He had given me the name of an information room in one of his telegrams.

Q With headquarters in the Little Building? A. Yes.

Q How many people did you ever see there at that headquarters? I mean, purporting to be members of the committee? A. I never was in that information room; as far as I know, I think it had been closed for the time being. Afterwards, as I understand it, another information room was opened.

Q Where? A. In the same room. I don't know whether it was called information room; I think it was an information committee.

Q Did you ascertain why this information room had been temporarily closed? A. No; I have no recollection of it.

Q Didn't you ask Mr. Cudworth? A. Yes; but I have no recollection of that.

Q What had been an information room was turned into a Christian Science practitioner's office? A. No.

Q I thought you said it had been before? A. No, I did not.

Q Oh, I see. I thought you spoke of an information room having been closed and another one started. Was I wrong? A. No.

Q Well, where was the information room that had been closed when you got here. A. 837 Little Building; Room 837, Little Building.

Q Therefore there had been an information room in the Little Building at 837 which had been closed? A. So I understood according to the telegram, and the fact that I found the door locked when I arrived.

Q Then where was the next information room started? A. They used the same room.

Q In other words, in the same room they had started an information office, and then had suspended it, and closed it as such, and then opened it again? Is that correct? A. I have no knowledge of that. I infer that.

Q Weren't you so informed? A. I have no recollection of that. I rather fancy that I was told that it had been closed but I have no recollection of it.

Q Isn't this just the fact: That the committee headed by Cudworth had started an information bureau in this room, and then when it was decided to— A. No, I don't understand that he started that; I don't know who started that information bureau—the first one.

Q Nobody ever told you? A. No.

Q He started the one that was started while you were here? A. I have no knowledge of it. I understood Mr. Cudworth had a good deal to do with it, but that is my understanding.

Q And you found him there when it was opened up again? A. No; I have no recollection of ever seeing him in the information room.

Q Ever seeing him there. But you say you understood he had something to do with getting it started again? A. That is my understanding.

Q It appears that something was said about suspending certain activities out of deference or courtesy to the court, or etiquette to the court. Do you remember that telegram? A. That was in a telegram, yes.

Q That is, you learned, did you not, from Cudworth and others, this in substance: That they had started this information bureau, for purposes that we won't discuss, and then when application was made to the court to intervene by Mr. Dawson's client he requested that the information bureau be less active? A. No.

Q Suspend their activities, out of deference to the court, until— A. I have no knowledge of that at all.

Q Weren't you so informed? A. No, I was not.

Q What? A. No.

Q By Mr. Cudworth? A. No.

Q Well, you learned what he sent in his telegram? A. He didn't say that in his telegram.

Q But he said that they were not

to push the work of sending around these petitions? A. That is not what he said, no.

Q What? Here at this end, but that you might do it at your end? A. No; he said they were to do nothing about the petitions, as I understand it.

Q They were to do nothing about the petitions; but you didn't know that that involved closing the information bureau? A. No; didn't know anything about that.

Q When you got here you found it was closed? A. I didn't know that it was called an information bureau.

Q But when you got here you found the office was a Christian Science practitioner's office? A. No, I did not.

Q I thought you said that was his office? A. No, I did not.

Q Oh, didn't you? A. His office was in the same building, but that was not his office.

Q And this office which had been used as an information bureau was closed? A. Yes.

Q To which you had been referred, to send your telegram? A. Yes.

Q Wasn't any explanation given to you by Mr. Cudworth as to why that was done? A. I have no recollection, except that he said that he was receiving the petitions that were being sent in and taking care of them, but as to the rest of it I have no recollection.

Q How soon was that information bureau office started after the court's adverse decision on the applications to intervene?

A. I know nothing about that.

Q Don't you know when those decisions were rendered? Don't you remember when the decisions were rendered? A. I know nothing about the starting of the first information room, if that is what you mean.

Q No. Don't you know when the decisions were rendered refusing intervention on the Hulin petition and other petitions here—the Attorney-General's motion to intervene? A. I remember about the time; I don't remember the date.

Q How soon to your knowledge did the information bureau start up again after the decision refusing the Attorney-General the right to intervene? A. I don't know anything about the starting up of it again.

Q I thought you said that you had been there. A. I had been in the room, yes.

Q How soon were you in the room after that adverse decision on the Attorney-General's petition? A. I don't remember. I don't remember whether I was there before or after; I have kept no record of it.

Q But until the injunction was served on them the room was kept open after the refusal of the petition of the Attorney-General to intervene? A. I have no recollection of that, I never connected the two in my mind.

Q When you came on here this spring you didn't come on with any authority to confer with the Attorney-General, did you? A. I don't believe he was specially mentioned, but I had authority to—I think the committee mentioned his name as one of the possibilities.

Q Yes. A. I don't think he was mentioned in the conference report.

Mr. WHIPPLE. I should like to take that exhibit, which is a copy of this. I have the printed record of yesterday. The exhibits, if your Honor please, are mostly in the hands of the stenographers, who are expediting the record, so that I shall have to ask a little indulgence in regard to such as are missing.

Q You said that you came on here for carrying out the purposes which were represented by the report of the conference committee? A. Yes.

Q The conference committee was not a committee from a conference of churches, but of Mother Church members? Is that correct? A. I don't know. That is still a disputed question in California, as to whether it was one or the other or both.

Q It begins:

"We, your committee appointed under and by virtue of a resolution adopted at a conference of Mother Church members, held in Second Church in the City of Oakland on January 3d, 1920, to present in writing to the members of The Mother Church residing in Northern California. . ." It purported to be a conference of members of The Mother Church, didn't it?

A Yes; that is what it was intended for.

Q And you say there is now a dispute or controversy in California as to which it was? A. Some people question that, as to whether they represented the churches or represented themselves as members.

Q Well, you haven't any recitation in your badge of authority indicating that you represented a conference of churches out there? A No.

Q It is merely a conference of Mother Church members? A. That is what I consider I am here for.

Q Of which these directors are the head—The Mother Church? A. Yes.

Q That is, you represented a committee of the members of a church of which the directors are the guiding control? A. Yes, when they are not under an injunction.

Q When they are not under injunction? A. Yes.

Q I see; and when they are you act for them? A. No, I act for myself.

Q You act for yourself, without any guidance from the head of your church? A. God is the head of my Church; I act with guidance from God.

Q Well, that is very true; and you

don't act at all, whether the directors are under injunction or not, you always act by guidance of God, I understand? A. I hope so.

Q So that your action is not affected in the slightest degree by the fact that the directors are under injunction, because your spiritual Leader is not, of course? A. There is a difference in them. If it had something to do with the Church, and the directors were not under an injunction, I would consult them first before taking an action; but where they are under injunction and cannot give me directions one way or the other, then it is my duty to act for myself when I see the Cause in danger—and I saw it.

Q Providing you are morally certain that what you do would not violate their wishes? A. Not at all.

Q Oh! Would you do it whether it would violate their wishes or not? A. I wouldn't consider that question, because they are not in a position to express their wishes to me.

Q To express wishes one way or the other? A. No.

Q But you have to infer what their wishes are? A. No, I don't. I have to consider what is right and do it.

Q I see; quite without any direction? A. Without any guess-work as to what they would want me to do.

Q Now your plan in this resolution is: "Your committee therefore presents the following plan." This is No. 1 under No. 1. "To endeavor to obtain the immediate voluntary resignation of the trustees (of The Christian Science Publishing Society.)"

A Yes.

Q That was one of the things you came on to endeavor to accomplish?

A I didn't understand that I was to endeavor to accomplish every one of those things.

Q Well, that was one of the things? A. That was one of the things, if that seemed a right and proper step for me to take.

Q If that was so, if you could bring about that result, why, then you didn't need any litigation, in your opinion? A. That would throw the whole case out of court then; there would be no danger of decisions rendered against them.

Mr. CHOATE. Pardon me; you talk when he is answering. I didn't get his answer.

Q Had you finished? A No. I said that if the trustees resigned it would throw the case out of court and prevent a decision being rendered against The Mother Church Manual.

Q And that was one of the objects for which you came? A. Yes.

Q Then, under 2—

The COURT. Did you say it would prevent any danger to the Church that would result from such a decision? Isn't that what you first said?

The WITNESS. No, I think not, your Honor.

The COURT. I thought you did;

that is the reason I asked that. You didn't quite fill it out.

Q Now, No. 2 is: "If necessary, to take immediate steps to compel the removal of said trustees not only from office but from membership in our Cause." How could they be removed from membership in your Cause? A. The directors could dismiss them.

Q That is, a part of your object was to get the directors to exercise disciplinary removal? A. Yes.

Q That is the only way that could be done—was to get the directors thus to move, wasn't it? A. No, I don't say that is the only way it could be done.

Q In what other way could you accomplish dismissal from The Mother Church of the trustees except by action of the directors?

A Well, if the directors, being under an injunction, could not get permission from the court to do that there might be some application from the members to the court to have them removed.

Q To have them removed as members of The Mother Church? That was your thought, was it? A. That is what the article says, to have them removed from membership in our Cause.

Q Yes; and your thought was that you would apply to the court to have them removed from membership in the Church? A. No; I said that was another possible way it could be done.

Q Another possible way? A. Yes.

Q That was a possible thing? A. Yes.

Q Would you admit for a moment that the courts of Massachusetts had the right to remove anybody from membership in The Mother Church? A. They could acknowledge that the total membership had a right to remove them.

Q Well, could the court remove them? A. I don't know.

Q The total membership couldn't remove them, because they are three themselves of the total membership. Just explain that. Would you admit that the court had a right, in a proceeding properly instituted, to remove the trustees from membership in The Mother Church? A. I haven't figured that out any way. I am just answering as the idea occurred to me now. I haven't figured the matter out.

Q Apparently you haven't figured out what your mission is very clearly, then, have you? A. Yes, I have.

Q Isn't this the chart of your mission—the resolutions which were, as I understand, in part drawn by you? A. I didn't understand that I was to do all of those things in that.

Q Well, what were they put in for? A. How did you understand that this was in part drawn by me?

Q I beg pardon? A. How did you understand that this was in part drawn by me?

Q I thought you testified. Am I wrong? A. You are wrong.

Q You didn't draw any of it? Then

you are merely a victim of what is drawn and did not participate in it? A. Pardon me, I haven't finished.

Mr. CHOATE. Pause a moment, please. I want you to have a chance to answer the question before he interrupted you. Will the stenographer read it?

(The question is read by the stenographer.)

Mr. CHOATE. Now go ahead and answer it fully.

Mr. WHIPPLE. I had not finished it.

Q Is that so? A. As far as my recollection goes, I didn't see the report until it was completed—this final one; I may have seen a former drawing, some weeks before, but this was an entirely different report. I made a suggestion to the committee that in making instructions for the delegate they ought to make them broad enough to give the committee a power to try any of many different ways which might present themselves, and specific enough so that the delegate couldn't do anything which would interfere with the Manual or seemed to be opposed to the Manual.

Q Then I call your attention to this, sub-division b under 2:

"2. If necessary, to take immediate steps to compel the removal of said trustees not only from office but from membership in our Cause:

(b) By proceeding for the removal of said trustees from membership in The Mother Church, under Sections 1, 2, 3, 5 and 7 of Article XI of the Manual, and under or under any provision that may be applicable or available." That is pretty distinct, isn't it?

A I have taken no action with regard to that.

Q Yes; but that was within your authority? A. Yes.

Q When you testified to Mr. Choate you said you came on here to accomplish the purposes of the resolution, didn't you? A. The purpose of the resolution.

Q Purposes, yes. A. No, purpose.

Q Oh, purpose of the resolution. A. Yes.

Q Which was to get rid of the trustees in some way? A. Which was to protect the Manual of The Mother Church and the Cause of Christian Science.

Q Well, that is pretty general; but the way you were going to protect it was to get rid of the trustees in some way or other? That was it, wasn't it? A. That was the one of the things that needed doing.

Q Well, in what other respect did the Manual need protection except to displace the trustees, as you viewed your mission?

A To prevent by legal means, by intervention in the suit, a decision which would upset the organization of our Church as left by Mrs. Eddy.

Q Well, a decision in favor of the trustees? A. The Master's findings would have had that effect.

Q Yes, that is it. Among other things, you were going to institute legal proceedings, if necessary? A. That was the main object of my coming.

Q But one of the principal causes of complaint against the trustees was that they instituted legal proceedings in court to determine what their rights were under the Deed of Trust? You understood that, didn't you? A. No, that was not the complaint. The complaint was that they went against the direct expressed wishes of Mrs. Eddy in the Manual. That is what the field considers; the field considers this on a religious ground.

Q When they brought this suit against the directors to have the court determine what their duties were—was that a violation of the Manual? A. It certainly was.

Q That is, bringing a suit in the Commonwealth of Massachusetts for the purpose of determining their rights and obligations, their privileges and their duties, under the Trust Deed, was a violation of the Manual in and of itself? A. They knew what the Manual's instructions were.

Q Pardon me. Was it—

Mr. CHOATE. Wait a moment.

The COURT. If he can answer it Yes or No he may do so; if he cannot answer it he may say so.

The WITNESS. I don't think I can answer that directly Yes or No.

Q Very well. But you felt that, without a violation of the Manual, you were at liberty to enter into litigation to prevent in that very action which they brought a particular decision, without your violating the Manual, did you? A. Why, I felt that the members of The Mother Church—yes, they can bring an action.

Q That is, the trustees could not bring an action to ask the court to construe what their duties and their rights were—

A That was not the question.

Q —under that, without violating the Manual, but— A. That was not the question, the violation of the Manual.

Q Wait until I have finished, please. But that you could stir up the churches to bring an action to intervene in the suit, to change the decision or to affect the decision—

Mr. CHOATE. Wait a moment, please.

Q —without violating the Manual? A. You are speaking of what would be a violation of the Manual—

Mr. CHOATE. That question is so long and involved that he ought to have it read to him.

The COURT. If the witness feels that he cannot answer it because it is too long, he may state so.

The WITNESS. I feel it misstates what I said.

The COURT. If Mr. Whipple has finished his question then you may answer it as you see fit, and if you cannot answer it because it is too much involved, why, say so.

Mr. CHOATE. Have it read to you, Mr. Fosbery, so you get the whole of it.

The WITNESS. I think I can answer that. The violation of the Manual was the opposition before entering into the court of the expressed wishes of Mrs. Eddy for the control of the Publishing Society, as expressed directly in the Manual of The Mother Church.

Q Who was to decide that—whether it was against the wishes of Mrs. Eddy or in accordance with them and under the Trust Deed?

A There were plain directions in the Manual which the trustees and every one else understood.

Q Who was to decide whether the directions were plain or not, and whether the Trust Deed was to control the trustees, or some other paper, or some other instrument? Who was to decide that, in your opinion? A. I think that would be in the hands of the directors.

Q In the hands of the directors. In other words, your theory was that the directors were to decide what the Manual meant, and that the court would have no right to interfere with that decision? That was your position, was it? A. I don't think the court has attempted to interfere with what the Manual means.

Q Well, will you answer the question I put? (To the stenographer) Will you read it to him?

(The question is read by the stenographer.)

Q That is, the decision of the directors as to what the Manual meant. That was your position, was it? A. I don't think that is a matter which would come before the court.

Q Well, do you mean by that that the court would have no right to decide it against the decision of the directors as to what was intended by Mrs. Eddy? Is that your position? A. No, I wouldn't go so far as to say that.

Q Well, haven't you said that? A. I don't think I said just that.

Q Haven't you said that? You have said that the Manual is the supreme law of the Church? A. Yes.

Q Now, don't you mean by that that in your view the court would have no right to decide that, as controlling the directors' action, the Trust Deed was the supreme law? A. I don't think there was any necessity to put the case to the court at all.

Q Do you think the Court has the right to decide against the interpretation of the Manual by the Directors? A. I don't know.

Q You don't know whether it has or not? A. No.

Q You would a good deal rather take the movement which was to compel the trustees to resign—that, you think, would be the better solution of it, don't you? Never mind if you don't care to answer it.

MR. CHOATE: He can answer it.

A I don't care to answer that question; it does not seem to be in ac-

cordance with what you stated before.

Q I thought not, that was why I was waiving it. Mr. Choate wanted you to have a chance to answer it if you desired to do it. You say that since you have been here, coming on last March, while you have seen the Directors you haven't talked with them at all about the litigation? A. No.

Q Have you been careful not to? A. I have been especially careful not to bring up the question of the litigation with them.

Q Have you told them what you have been doing? A. No.

Q Have you been careful not to? A. Why, I haven't had conversations with the Directors except as I told you.

Q You could have had if you had sought them? A. I didn't seek them.

Q Have you been careful not to seek them? A. Well, I didn't seek them.

Q Have you been careful not to? A. Well, the fact that I didn't seek them would show that I had not sought them; that is all, I think, there is to that question.

Q That is, the fact that you didn't seek them shows that you didn't? A. Yes.

Q Didn't what? A. Didn't seek them.

Q Do you think that is a logical answer? A. I think so, yes.

Q It shows something else, too, doesn't it? Doesn't it? A. I don't know. What do you think it shows?

Q I think it shows that you had a purpose in not seeking them? A. I certainly did.

Q What was the purpose? A. I didn't want to discuss the matter with them.

Q You didn't see them for fear you might discuss the matter and you had a purpose in not discussing the matter? A. I wanted to avoid all appearance, so no one could say I had consulted with the Directors about the matter I had in hand.

Q You didn't want to have any expression from them as to whether they approved of your activities or not? A. No.

Q You wanted it to appear at least that you were acting entirely independently of them? A. I was acting independently of them.

Q Still you knew what you were doing was in favor of the Directors' position and their claims in the lawsuit, of course? A. Yes.

Q You knew you were working on their side? A. I was working on the side of the Manual.

Q Well, on the side that the Directors took, not them individually, but on the side that the Directors took? A. They were on the side of the Manual and so was I.

Q You were working, as you knew, with a common purpose—you and the Directors? A. As far as I know they

were working for the same object that I was.

Q That is right. So far as you knew you were working with a common purpose with the Directors? A. No.

MR. CHOATE: I object to that question.

MR. WHIPPLE: I think he said that. We will leave it to the record to decide it. Neither you or Mr. Choate or I will decide it. We will leave it to the record.

MR. CHOATE: You made an assertion that he said it.

THE COURT: The record speaks for itself.

MR. WHIPPLE: Of course.

Q In your own mind you had no doubt that you were doing—what you were doing was right along the line that the Directors were trying to accomplish in the suit which the Trustees brought against them?

MR. CHOATE: He has already answered that question. He said he was working for the same object.

Q I understand that is what you said? A. I understood that the Directors were trying—endeavoring to remove the Trustees from office and I was doing the same thing.

Q And you were working in what you may call silent cooperation with them? A. No, I was not cooperating with them in the work.

Q Just working for the same end? A. Yes.

Q With a common sympathy and a common purpose? A. I suppose they sympathized with my actions, I don't know.

Q But you do know that their purpose was a common one with your purpose? A. The purpose was a common, one, yes, as far as the Manual was concerned.

Q In some way to achieve the removal of the Trustees who you thought had disobeyed the Manual? A. No, the main object was to protect the Manual.

Q How protect it? By the removal of the trustees? A. That would be one way to protect it.

Q And that is the special mission you had? A. The special mission was to uphold the Manual. The removal of the Trustees was a minor matter.

Q Nothing else threatened the Manual except the Trustees' conduct at that time—except perhaps the Welfare Committee's report, if that does? A. A decision by the Court leaving the Directors without power to remove the Trustees at some future time would affect the Manual regardless of the presence of the Trustees.

Q You say this meeting of churches or conference of churches in Chicago happened or appointed for May 6th, didn't happen? A. No.

Q What did you have to do with the call of that? A. I inserted a few words in the first call after it was written.

Q Where was it written? A. New York.

Q At whose office? A. Office of the Executive Committee from the State of New York.

Q Who was at the head of it? A. Martin B. Jackson.

Q The same man who declared he was the man who instituted the Hulin suit? A. I don't know whether he declared that or not.

Q You knew he was interested in the Hulin suit? Did you not? A. Yes.

Q It was in his office that you assisted in preparing this call? A. Yes.

Q For a conference of the churches on May 6th? A. Yes.

Q When was that? A. I think that it was on or about the 17th of March, then or about then.

Q Who drew the call? Who drew the call? A. I don't know who drew it first.

Q Who was present when you made your suggestion? A. Mr. Blakeley.

Q Who else? A. I don't remember. There was another gentleman there by the name of Mr. Lewis, I don't remember.

Q Mr. Cudworth? A. No, he wasn't there.

Q Now you say you didn't hold the meeting, it was called off by the Board of Directors, was it not? A. No; we called it off.

Q At whose suggestion? A. My part in it was—my part in consenting to the calling off was because the other states had agreed to call it off.

Q Who was the "we". You say "We called it off." Who was the "we"? A. The different states that had participated in the call.

Q Don't you know who it was called it off, or why it was called off? A. There were several reasons, I believe, given. If that is what you are asking there was a letter from the Board of Directors to Mr. Jackson saying they did not think the meeting was called in accordance with the Manual.

MR. WHIPPLE: Have you a copy of that letter, please? I should like to put it in—the letter from the Directors to Mr. Jackson about that meeting.

MR. BATES: I am informed, Mr. Whipple, that your subpoena did not include any such letters, but the Secretary says he will have them here at two o'clock if you wish them.

MR. WHIPPLE: I would like to have any letters that have been sent to these defendants or any of them of that description.

Q Did you see the letter or a copy of it? A. I think I saw the original letter.

Q To whom was it addressed? A. I believe it was addressed to Mr. Jackson or to the New York State Executive Committee.

Q What was the date? A. I don't know.

Q Who was present when you saw the letter? A. I have no recollection.

Q I beg pardon? A. I have no recollection.

Q Was a statement then sent out calling off this conference, or how was the communication sent or issued to the people who had been summoned to attend, or invited to attend that they shouldn't attend. A. Wires had been sent out by the New York State Committee before I knew anything about the letter, saying that they withdrew their share in the call and asking the other States to do the same.

Q Did you see a copy of that letter? A. I don't think so.

Q Where were you when it was sent out? A. I believe I was in Boston.

MR. WHIPPLE: Governor, will you give me a copy of the replies that the Directors received from this letter, if you will, for which I have asked, as well as the letter I asked for? I would like the entire correspondence.

THE WITNESS: I understand there was no reply.

Q You recognized this communication as a communication from the heads of the Church and there wasn't a moment's hesitation in obeying it by calling off this meeting? A. The matter had been accomplished before I arrived there.

Q You acquiesced? A. Yes, because I couldn't call a meeting in Chicago alone.

Q You didn't try to go on with the conferences of churches after the Directors had pointed out what they did point out? A. After the steps of the New York Committee it didn't or wouldn't do any good, it would have been useless to go on.

Q Certainly. You wouldn't have anyway, would you? A. Why, I assisted in preparing the letter to the churches stating why we had called off the meeting. Mr. Choate has the letter there.

Q Was it sent? A. Yes, I understand it was sent by the New York Committees to all States.

Q I thought you said they had already been notified that the meeting was called off? A. The States who had participated in the call were notified by telegram by the New York State Committee before I arrived there.

Q Then the people who had been invited were later communicated with by letter which you assisted in preparing? A. Yes.

Q How many churches was it sent to? A. I don't know, I am sure. It was given a wide distribution.

Q By whom? A. The New York State Executive Committee.

Q But you assisted in the preparation of it? A. I did assist in the preparation of it.

Q Therefore this was the procedure: The New York State Committee called the conference, then got a communication from the Board of Directors which we shall have here at two o'clock in which they asked

you to cancel the call and you acted promptly and sent out word to the inviting churches that the conference was off? A. That they had withdrawn their share in the call and asked to have the others do the same.

Q You haven't a copy of it? A. No.

MR. WHIPPLE: I should like a copy of it if it can be produced by any of the counsel. If a copy of it was sent to you, Governor or to your clients may we have it?

MR. BATES: I don't think we have had a copy of it; if we have we will be glad to produce it.

MR. WHIPPLE: It is possible that counsel for the New York Committee has one. May I ask Mr. Dawson if you have one?

MR. DAWSON: No, I haven't. It is possible I may obtain one by wiring Mr. Jackson.

MR. WHIPPLE: If you can we would be grateful. I would like to see the terms that were used.

Q Subsequently you assisted in preparing a statement to the churches that had been invited as to the reasons why the invitation was declared off? A. Yes.

Q Who assisted besides you in the preparation of it? A. Mr. Blakeley and Mr. Jackson, I believe.

Q In the office of the New York Committee? A. Yes.

Q I take it you had met Mr. Dawson? A. Yes.

Q When did you first meet him? A. Why, some time after I arrived in Boston.

Q Did you meet him in New York? A. I met him afterwards in New York.

Q At the office of the New York Committee? A. Yes.

Q How many times? A. I think I met him there once.

Q At the office of the New York Committee? A. Yes.

Q You were introduced to him as counsel for the New York Committee, were you not? A. I had met him in Boston before that. I called on him myself, if I remember.

Q As counsel for the New York Committee? A. Yes.

At this point the Court took a recess until two o'clock.

AFTERNOON SESSION

The Court came in at two o'clock.

ARTHUR F. FOSBERY, resumed CROSS EXAMINATION CONTINUED

MR. WHIPPLE: Governor, have you that correspondence?

MR. BATES: The Clerk has it, he will be here in a moment, I expect. What would you like?

MR. WHIPPLE: I should like the correspondence with the Directors, all the correspondence with the New York Committee, but what I have asked for especially is the letter with regard to calling off the Chicago conference.

Now this letter which you have handed me applies to a letter dated March 23, addressed to Christian Science Churches and Societies of the United States of America. May I have

that? I would like to get the thing chronologically if I can.

Q I hand you what purports to be a copy of a communication of the Joint Executive Committees, so-called, Room 830, 33 West 42nd Street, New York City. The first signature attached to it is "Executive Committee of Northern California". Who was that? A. I was the executive Committee—I was the delegate. They signed it Executive Committee of Northern California; they should have said Delegate for members of Northern California. It meant the same thing.

Q Did you sign it? A. I gave my consent.

Q Did you attach the signature? A. No, I did not attach the signature.

Q You gave consent to have attached "Executive Committee of Northern California"? A. Virtually that.

Q But in point of fact your paper or credential showed you were a representative of the conference of First Members of Northern California?

MR. WITHINGTON: Members of The Mother Church. A. I stated they didn't sign it properly.

Q That is it should have been signed Delegate of the Members of The Mother Church of Northern California"? A. That is what it should have been, by the Committee? A. Yes; by the Committee; yes.

MR. WHIPPLE: I offer this and will read it.

"Christian Science Churches and Societies of United States of America." This is dated March 23, 1920.

"Dear Friends:

The Executive Committees of New York, New Jersey, Northern California, Georgia, and Delaware, respectfully recommend that members of the Christian Science Churches and Societies, or the members of The Mother Church in your state meet as promptly as possible, to consider the appointment of Delegates not to exceed five in number, who shall be members of The Mother Church, to attend a meeting to be held in Chicago, Thursday, May 6th, 1920. For the purpose of this conference, the state of California shall be considered as though it were two states. (See Article XXXIII—Sect. 3 of the Manual.)

Many of the states already so organized or that are in process of organization, as a preliminary step to this end, have had the three largest Churches or a group of Churches in the state, invite the members of each Church and Society located therein, to appoint a Delegate or Representative from their membership, who is also a member of The Mother Church, to meet at a designated time and place in their state for the purpose of organizing and electing an Executive Committee authorized to serve as Delegates, or for the appointment of an Executive Committee and Delegates.

The Delegates, not to exceed five from each state, will meet in Chicago,

Ill., on Thursday, May 6th, 1920, for the purpose of defending and upholding the Eighty-Ninth Edition of the Manual of The Mother Church, approved by our Leader, as the duly constituted authority for the government of The Mother Church in all its departments, and to take such further steps as may be deemed wise and necessary to safeguard the rights and interests of the beneficiaries under all Deeds of Trust made or executed by our Leader, Mary Baker Eddy, and to take such other action as may properly come before said meeting.

Will you kindly acknowledge receipt of this communication and promptly advise us what steps have been taken or are contemplated by your state, with a view to having Delegates elected or appointed for the purpose above indicated.

The undersigned Executive Committees will gladly furnish to you such information or assistance as you may desire.

Respectfully,
EXECUTIVE COMMITTEE OF
NORTHERN CALIFORNIA
EXECUTIVE COMMITTEE OF
DELAWARE
EXECUTIVE COMMITTEE OF
GEORGIA
EXECUTIVE COMMITTEE OF
NEW JERSEY
EXECUTIVE COMMITTEE OF
NEW YORK

P. S. Please address all correspondence to:

JOINT EXECUTIVE COMMITTEE?
ROOM 830
33 W. 42nd STREET
NEW YORK, N. Y.

As our Leader says on page 48 of our Manual: "Whenever God calls a member to bear testimony to Truth and to defend the Cause of Christ, he shall do it with love and without fear."

[Above letter marked Exhibit 41-F.]

MR. WHIPPLE: This has a stamp which says "Read Apr. 1, 1920. The C. S. Board of Directors." We have seen that same stamp on papers previously and apparently is the stamp put on in regular order when a paper has been submitted to the Board and read.

Q Now the answer to that is—before I ask that let me ask, do you know who sent that? A. The New York Executive Committee signed this.

Q Who sent it to the Directors? A. I presume they did; I didn't.

Q Was it talked over as to whether a copy of it should be sent to the Board of Directors? A. No, not in my hearing.

Q Did you know of any other calls for meetings being sent to the Board of Directors? A. No.

Q Have you heard of any? A. Not to my recollection.

Q Or calls for conferences? A. No, not to my recollection.

Q Weren't copies of your resolutions adopted in California sent to the Board of Directors? A. Not to my knowledge.

Q Would you say they were not? A. I wouldn't say they were not, no.

MR. WHIPPLE: Will you let me have them if they were sent, Governor? Copies of resolutions sent by the members of The Mother Church in California, and while you are about it, I would like those from Georgia and New York and the communications sent with them and whether the resolutions were passed. That is, between the Board of Directors and the Executive Committee of New York.

MR. BATES: We will hand them to you if there are any in a moment. We have about a thousand of such things here.

MR. WHIPPLE: That were sent to you by the various committees?

MR. BATES: Sent by various churches.

MR. WHIPPLE: I am very glad they kept the Directors in touch with what they were doing and gave them full information.

MR. BATES: We have those the Trustees sent, too.

MR. WHIPPLE: Yes, the Trustees remonstrated against their doing it. Did the Directors? Perhaps when you find the papers you can answer my last question, Governor, as to whether the Directors ever remonstrated against it. The paper which I now offer is a copy of the letter from the Directors' Corresponding Secretary dated April 1, 1920. It was a registered letter and the registry receipt is attached to it. It bears the legend: "Original posted at Station A, 17, 9 A. M., Friday 4/2/20 Reg. mail. Spl Delivery. INDEXED." The word indexed is a stamp.

"April 1, 1920.
Joint Executive Committee,
Room 330, 33 West 42nd St.,
New York City.

Dear Friends:

With reference to your letter dated March 23, addressed to 'Christian Science Churches and Societies of United States of America,' The Christian Science Board of Directors instructs me to write you as follows.

While fully and gladly recognizing that the members of The Mother Church may and should apply the teachings of Christian Science for themselves, subject only to its By-Laws, the Directors are sometimes obliged to express the Board's conclusion that a proposed course of action would be inconsistent with what Mrs. Eddy has described as "laws of limitation" (Miscellany, page 229). Accordingly, after deliberate reflection, the Directors feel obliged to express the conclusion that the meeting or conference which you have called for the 6th of May in Chicago would be inconsistent with the spirit or substance, if not the letter, of our Church Manual. It may be that Article XIII

and Article XXIII, Section 1, do not specifically forbid such a convention; yet to quote Mrs. Eddy's words from another By-Law, they set forth our denominational 'system of government and form of action' (Article 1, Section 9) in regard to general meetings, conferences, and conventions. Another related By-Law is Article 1, Section 6.

Having come to this conclusion, the Directors hope that you will be quite willing to accept it, and that you will immediately cancel the call which you have issued. The Directors also take this opportunity to express their hearty appreciation of your evident desire to be helpful in supporting the government of The Mother Church.

Sincerely yours,
Corresponding Secretary for"

The rest of that is cut off. I understand there is no question that this was signed by Mr. Jarvis as corresponding secretary and by the authority of the Board of Directors. May that be assumed, Governor.

MR. BATES: I am not a party to this suit, but your asking me the question I will say you may assume it as far as I am concerned.

Q The original which you saw had Mr. Jarvis' name attached? A. I presume so; I cannot now recollect.

Q You haven't any recollection about it, but does this sound like the original that you read? A. Yes.

Q Did you note this part of it "The Directors also take this opportunity to express their hearty appreciation of your evident desire to be helpful in supporting the government of The Mother Church." A. I noticed it just now when you read it.

Q You never noticed it before? A. I presumably noticed it when I read the letter.

Q It was addressed to you among others, wasn't it? A. I don't think so.

Q You were one of the Joint Executive Committees, weren't you as described on the other letter I just put in? A. That is so on the face of it. My impression was that it was addressed to Mr. Jackson.

Q And therefore you understood, did you not, that the Directors when this occurred, while suggesting that you should call off your Chicago conference, yet they heartily appreciated your evident desire to be helpful in supporting the government of The Mother Church? A. Of course they would appreciate our desire to be helpful, though it seems they did not agree with our method of doing it.

Q But there was nothing to indicate that they hadn't been up to that time, so far as you had seen? A. No, neither one way nor the other.

Q But now we find them expressing their hearty appreciation? A. Yes, of our desire to be helpful.

Q Yes, your evident desire to be

helpful. That was quite a friendly commendation from the heads of your Church, wasn't it? A. Yes.

Q Didn't lead you to think anything you had done up to that time didn't meet their approval, of course? A. Why, the latter certainly did.

Q I mean up to the time you got the communication asking you to call off the conference? A. Up to the time the letter was written.

Q Have you your Manual? A. Yes.

Q Will you turn to the places in the Manual to which they refer as the authority for the statement that, while it does not specifically forbid such a convention yet they construe it as against the spirit. That is, will you read Article XIII and Article XXIII, Section 1. A. "Local Self-government." This is Article XXIII. "The Mother Church of Christ, Scientist, shall assume no general official control of other churches, and it shall be controlled by none other.

"Each Church of Christ, Scientist, shall have its own form of government. No conference of churches shall be held, unless it be when our churches, located in the same State, convene to confer on a statute of said State, or to confer harmoniously on individual unity and action of the churches in said State."

Q Read Article XIII. A. Any particular section or the whole article?

Q No, I won't trouble you to read it. I think perhaps it is not particularly material unless your Honor should think it was of advantage to have in the record these references. I had thought it would be, but I see no reason for it.

Now may I have the letter sent in reply to this letter of the Directors to the Joint Committee?

[Letter handed to Mr. Whipple by Mr. Choate.]

MR. WHIPPLE: This is on a paper headed "Christian Science Delegates of New York State, 33 West 42nd Street, New York. Office of Executive Committee. Martin F. Jackson, C. S. B. Chairman. B. Palmer Lewis, C. S., Treasurer. Olive May Thompson, S. C., Secretary. Winfield S. Croser, C. S. Thomas W. Dixon, C. S. The stamp reads "Read Apr. 6, 1920. The C. S. Board of Directors." It is dated April 3, 1920.

"The Christian Science Board of Directors,

105 Falmouth St.,
Boston, Mass.

Dear Friends:

Your letter of April 1st at hand. We are glad to inform you that at our meeting of April 1st, we rescinded our part of the call for the meeting in Chicago of May 6th, such meeting to be formally cancelled next week.

Our committee was visited by Delegates from California, Illinois and New Jersey, and under pressure of the argument that we were being severely criticised for monopolizing this move and neglecting to cooperate with other states." There is an X

in there and something written that does not appear who by, and therefore I shall leave it out. "We were not getting the support that we should have through the field; this was the principal argument to swing us out of our original purpose. We felt, however, that although this meeting was not in conflict with the Manual, there was no provision for such a meeting in the Manual, and that this would prove the correctness of a criticism of one J. V. Dittmore, who is arguing that the Manual is not sufficient government for the Church today and needs to be amended, in our desire to cooperate we acceded to their plan.

We are glad to inform you that the six states who signified their intention to cooperate in the call, have very willingly rescinded their position.

With kind regards,

Sincerely,
Martin F. Jackson,
Chairman."

Q You note that this letter says "Our committee were visited by delegates from California." You are the only delegate? A. I am the delegate they refer to, evidently.

Q You are the only one from California as far as you know who was there to visit them? A. Yes.

Q Representing what you did represent and testify to? A. Yes.

Q "Under pressure of the argument that we were being severely criticised for monopolizing this move" that was your argument? A. No, I didn't make that argument.

Q You didn't make it? A. No.

Q Then if there is any implication in the letter that you did make that argument it is not true? A. No, it is not true. It may not have referred to me.

Q It says "Our Committee was visited by Delegates from California, Illinois and New Jersey, and under pressure of the argument that we were being severely criticised for monopolizing this move and neglecting to cooperate with other states" you say that was not your argument. A. No.

[Letter marked Exhibit 43-F.]

MR. WHIPPLE: Now, Governor, will you let me have all the letters which preceded this that passed between the New York Committee and the Directors?

MR. BATES: I am informed there were none.

MR. WHIPPLE: Were there any after this?

MR. BATES: There were none.

MR. WHIPPLE: May I not ask whether the revocation that was sent to the other churches, a copy of it wasn't sent to you? Haven't you a copy of that?

MR. CHOATE: This method of examining Governor Bates while my witness is on the stand under cross examination seems to me very irregular, although Governor Bates is good natured and does not complain about

t. But may I ask that the examination of my witness be completed before Governor Bates is put on the stand?

MR. WHIPPLE: I agree Governor Bates is good natured, as he always is, and he is a pattern for many of us.

Q Did you see this letter? A. Never heard of it until this minute. I understand that we had agreed at the time that there should be no answer by the Directors—no answer to the Directors' letter.

MR. WHIPPLE: Do you mind passing on the result of the Governor's good nature, or is it going to stop with you?

MR. CHOATE: It is going to stop with me.

MR. WHIPPLE: I thought it would be difficult to get his good nature reflected through you.

MR. CHOATE: You have known me a long time so you ought to know.

MR. WHIPPLE: That is so; I speak from long experience, pathetically, on that subject.

Q Now tell us about these advertisers you called to see. Who was the first one you mentioned, the furrier. A. Mr. Presley.

Q You couldn't remember his name his morning? A. I remember it now.

Q Anybody remind you of it? A. Yes, I think I saw him in the audience.

Q Saw him in the room this afternoon? A. Yes.

Q And just as soon as you saw him his name came to you? A. No, not right away. I told the stenographer about it before I saw him.

Q Now when did you go to his place? Can you fix the date of it? A. No, I cannot. I would imagine it was in the first week or two after the master's findings were published in our local papers.

Q Within a week or two after you had cancelled your subscriptions? A. It was after that, yes.

Q How soon after? A. I should say within a week or two. That is my recollection.

Q You hadn't heard about all the other people having cancelled up to that time? A. I heard that all the churches, eleven of them, I think and four or five in San Francisco had cancelled.

Q Where did you hear it, from whom; was it by letter, or if not, from whom? A. No, it was general talk in San Francisco; I don't know who told me.

Q You had no other occasion of going to see Mr. Presley except this advertisement? A. None other, no; to notify him of the cancellation of that—

Q You saw that he was an advertiser in the— A. Yes, I knew he was an advertiser.

Q You saw that by reading the monitor; it was the ad in the Monitor? A. Yes.

Q You introduced yourself to him when you came in, didn't you?

A. Why, he knew me; I met him in the building often.

Q Well, you had never had any talk with him? A. Oh, yes; we used to talk occasionally in the elevator, going up—nothing very particular.

Q You had never visited his place of business before? A. No.

Q And the only reason that you went was to persuade him, or to notify him, with reference to removing his advertisement,—that is all you went to him for? A. I went with regard to his advertisement.

Q You said: "I notice that you have an advertisement in the Monitor"; that is what you said to him, wasn't it? A. I don't remember.

Q Well, that in substance, didn't you; you called attention to the fact in some form that he had an ad in the Monitor?

A. I don't know whether I did or not. We talked about his advertisement, his—

Q Well, he didn't tell you before you had talked about it that he had one in the Monitor, did he; you introduced the subject in that way, didn't you? A. I introduced the subject of his advertisement, yes.

Q You saying that you noticed that he had one? A. Well, I don't remember those words.

Q Then did you say: "We want everyone to withdraw their advertisements and stop their subscriptions"? A. No, I didn't say that.

Q What did you say? A. I know I didn't say "we," because I wasn't acting for anyone else in the matter.

Q Well, tell us what you did say on that subject. Would it be all right if we put "I" instead of "we"? A. Read the statement again, so that I can remember.

Q The statement that I recited to you is: "We want everybody to withdraw their advertisements and stop their subscriptions." A. No, I didn't say that.

Q Would it be all right if we put in "I" instead of "we"? A. No, that wasn't my statement.

Q Well, you did want everybody to do it that you could reach, didn't you? A. Well, I wouldn't go so far as to say that, no.

Q Well, what were you there seeing him for; you wanted him to, didn't you? A. I thought that we should withdraw our support from the Publishing Society, yes.

Q And you wanted him to do it? A. I put it up to him; I wasn't going to urge him to do it against his will.

Q Well, but you wanted to suggest it? A. Yes.

Q You wanted him to withdraw his support by cancelling the subscription and taking out his ad; and you said so, didn't you, frankly, didn't you,—in substance? A. I didn't say I wanted him to do it. As far as I recollect I told him, put the proposition up to him. I made the sugges-

tion to him, and I left him to decide for himself.

Q Well, tell us what you said to him. A. Well, just as I said it to you now.

Q Did you say: "I put up the proposition to you whether you had not better withdraw your card and discontinue your subscription"? A. No, I didn't say that.

Q Well, what did you say? A. Well, I can only state what I said by my recollection of the frame of mind at that time, because the conversation has gone pretty much out of my head. It happened some three months ago. My recollection was that—or as to my frame of mind at that time I would have suggested to him that subscriptions were being cancelled and that it would be a good plan for Scientists to withdraw their support from the Monitor for the present.

Q What did he say? A. He said that he would do that if other Scientists were going to do it.

Q What did you say to that? A. I said I thought they would.

Q Didn't he ask you why you were taking the trouble to do this?

A. I have no recollection of his asking that question.

Q And didn't you say, "Because the Trustees have been withholding money which does not belong to them, and spending it wrongfully, and we want to withdraw all support from them"?

A. No, I didn't say that.

Q Did you say anything about their withholding money? A. No, I don't believe so.

Q Will you deny it positively? A. I don't think I ever used that argument to anyone.

Q Will you deny that you said it to this man? A. Well, that's rather difficult at this time. To the best of my remembrance I didn't say it. I wasn't in the habit of using that argument. I don't believe that I said it.

Q That is as strong as you will put it,—you don't believe you said it? A. Yes. Will you repeat that again, till I consider it?

Q As to whether you did not say to him in substance, in reply to his asking why you were doing this, suggesting the withdrawal of advertisements and the cancellation,—if you didn't say: "Because the Trustees have been withholding money which don't belong to them, and have been spending it wrongfully, and we want to withdraw all support from them"? A. No, I didn't say that.

Q Any part of it? A. It is pretty hard to take out a part of one sentence.

Q Well, or the substance of it? A. No, I did not make that argument to him.

Q That you are positive of? A. I am positive I never made that argument to him.

Q And didn't he say to you: "You must be trying to break the Publishing Society," to which you replied: "Yes. The sooner the better"? A. I have no recollection of that.

Q Well, would you deny it? A. Yes, I didn't intend to break the Publishing Society at that time.

Q What is that? A. I didn't want the Publishing Society broken. I surely would not have said so.

Q You would not have said so? A. No.

Q Well, you were trying to break it, weren't you, by getting subscriptions withdrawn and cancelled? A. Why, no. It was our Publishing Society.

Q Our Publishing Society? A. Yes.

Q I thought you said you did not recognize it as the Publishing Society of the Church after the action that the Trustees had taken? A. No, I didn't say that.

Q I thought you said that the literature was spurious? A. Yes, I did.

Q I see. You wanted to hurt it just enough so as to get the Trustees out? A. I didn't think that the Trustees would resign on account of our actions in withdrawing our support.

Q You didn't think they would resign? A. I didn't think they would resign on that account.

Q But you would have been glad to accomplish it if you could? A. Oh, I would be glad to have them resign at any time.

Q And you wanted to make it possible for them to do it—make it necessary for them to do it, did you? A. I didn't think that that method would make them resign, and have frequently said so.

Q Did you see the White House people, so-called? A. No.

Q Do you know anyone that did? A. No.

Q Did you suggest anyone going to see them? A. No.

Q Now, you know who I mean by the "White House"? A. Yes.

Q And you state positively that you did not speak to anyone connected with that concern about their advertisements? A. Yes, I have no recollection at all.

Q Well, will you state it stronger than that; will you take your oath that you did not? A. That I did not speak to anyone connected with the White House?

Q Yes, directly or indirectly, about discontinuing their ad? A. I have absolutely no recollection of it.

Q Well, that is as strongly as you will put it? A. Yes, I have absolutely no recollection of it.

Q Did you Hotel Dorel? A. No.

Q Or the Tozer Company? A. No.

Q None others than the four or five that you have mentioned?

A. No, I have no recollection of it.

Mr. WHIPPLE. That is all.

Mr. CHOATE. That is all.

Mr. KRAUTHOFF. May I ask—

Mr. CHOATE. Governor Bates said that he had this additional letter which he thought you ought to have [handing letter to Mr. Whipple].

Mr. WHIPPLE. This has come through the gloom of your disapproval then, with the effulgence of the Governor's good nature.

Mr. CHOATE. I just wanted to put the Governor right, because he said he didn't think he had any more.

Mr. WHIPPLE. I would like to offer this, if your Honor please.

[Letter from Jarvis to Jackson, April 5, 1920, is marked Exhibit 44, and read by Mr. Whipple, as follows: Exhibit 44.

"April 5, 1920.

"Mr. Martin F. Jackson
501 Fifth Avenue
New York City

"Dear Mr. Jackson:

"The Christian Science Board of Directors instructs me to acknowledge receipt of your kind favor of April 1, and to thank you for the efforts made toward abandoning the proposed National Conference at Chicago.

"With kindest regards,

"Sincerely yours,

"Chas. E. Jarvis.

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

Q I notice that that [Exhibit 44] is not directed to the office, but what I assume is Mr. Jackson's residence. Have you seen Mr. Jackson at his residence? A. No.

Q Do you know where he did reside? A. No.

Q [By Mr. Krauthoff] Mr. Fosbery, at the doings of the various things to which you have testified, were you a member of The Mother Church? A. Yes.

Q And are now? A. Yes.

Q And what you have done you have done under your understanding of what the Manual of The Mother Church called upon you to do? A. Yes.

Mr. DODGE. Shall we proceed now?

The COURT. I think I had better dispose of this case, if all the evidence is in, and clean this up as far as the arguments go, and then take up your case afterwards. They are separate matters. Do counsel desire to proceed to argue? Are you ready, are counsel ready to make the arguments in this case?

Mr. WHIPPLE. I had thought, if your Honor please, we might want to call one or two—

The COURT. Oh, I understood the testimony was all closed. I asked the question.

Mr. WHIPPLE. I beg your Honor's pardon, I did not hear it.

The COURT. Oh, I understood that the testimony was all closed.

Mr. WHIPPLE. I missed the question; I was waiting. I heard them ask as to whether they should go on with the other cases, and then I did not hear any remark.

The COURT. I said, you will remember, that I would take up their cases after I had heard the arguments and disposed of this one.

Mr. WHIPPLE. I so understood, and I was interested in what your Honor said.

The COURT. Then proceed with the evidence.

Mr. WHIPPLE. I did not know whether the evidence was closed by the respondent. Mr. Jarvis, will you take the stand.

CHARLES EDWARD JARVIS, Sworn.

Q [By Mr. Whipple] Mr. Jarvis, will you state your full name?

A Charles Edward Jarvis.

Q What is your business or occupation? A. Clerk of the First Church of Christ, Scientist, Boston, and corresponding secretary for the Christian Science Board of Directors.

Q What are your official duties as corresponding secretary?

A To receive the mail addressed to the Directors; answer it, under their direction; care for the records of the Directors; keep their minutes, under their direction.

Q Have you the minutes of the meeting of the Board of Directors in connection with the receipt of intelligence from different churches as to such action as they are taking with regard to litigation? A. I have all of the minutes of the Directors. I cannot say that they invariably record the receipt of all these communications from the churches on this subject in question.

Q In point of fact have there been sent to the Directors copies of all the resolutions passed by different churches and societies and conferences of members of The Mother Church?

A. Pardon me. Have you finished your question?

Q Yes. A. I am unable to state.

Q Have they received a great many? A. We have received a great many, yes.

Q When did you first receive them,—what is the date of the first one? A. It would be impossible for me to say offhand.

Q Well, haven't you them here? A. All of the communications from churches, do you mean?

Q Yes. A. I have not.

Q Have you any of them? A. I have.

Q How do you happen to have some and not others? A. Your subpoena called for, as I understood it, communications from churches in California and Illinois.

Q Have you those from New York? A. I have. From New York?

Q Yes. A. No, sir.

Q Let us have those from Illinois and California. Will you produce those from Illinois? A. Yes.

Q All the communications, whether by way of circular or any other method of communication? A. Do you wish from organizations only, or from organizations and individuals?

Q Organizations; and copies of communications which have been sent to them by the Board of Directors.

Mr. WHIPPLE. And perhaps, if your Honor please, I may be permitted to say to Mr. Jarvis, lest I forget it, that I shall desire all the communications for all the churches, in the cases which are to go on next, because we gave the notice and issued the subpoena only with regard to the cases which are instant before your Honor.

Q Will you remember that, and bring tomorrow all the communications that you have, and especially from New York and Northern California, Chicago and Illinois? A. I have everything for the states of Illinois and California. I understood from the subpoena that those specifically were requested, and those only.

Q You are quite right about it, but I am enlarging it for tomorrow, that is all. A. Yes, sir. New York for tomorrow?

Q Yes, and from all the organizations or churches. A. In the United States?

Q Yes. A. Very well, sir.

Q Now will you let us have the first one that was received from California. A. Well, they are not arranged chronologically, they are arranged geographically.

Q Well, how will your geographical arrangement help you in producing the California ones? A. All of those within the state of California.

Q All right. Now what is the most convenient way to utilize the geographical distribution of them? A. Well, they are arranged according to the cities in alphabetical order.

Q Well, let us begin with San Francisco then. And I would like especially from San Francisco communications from this conference of members of The Mother Church, although I would be glad to take the communications from the churches also in San Francisco. A. Do you wish me to hand them to you?

Q Well, I would just as lief step up and get them, if you will give them to me chronologically, as near as possible. A. I will give them to you in the numerical order of the churches, if it is agreeable. The conference to which you refer, Mr. Whipple, was held in Oakland, California.

Q Well, just include that, if you will, too, in my suggestion as to California. I associate them together in my mind.

A. Yes.

Mr. WHIPPLE. I will offer this, if your Honor please.

[Letter from Miss Scoville to Board of Directors, January 10, 1920, is marked Exhibit 45, and read by Mr. Whipple, as follows:

Exhibit 45.

"First Church of Christ, Scientist,
in San Francisco, Cal.
California and Franklin Streets
January Tenth
1920

"Board of Directors,

The First Church of Christ, Scientist,
Boston, Massachusetts.

Gentlemen:—

"I am directed to forward you the following copy of a resolution passed by First Church of Christ, Scientist, in San Francisco, California, at its annual meeting, January 5th, 1920:

"WHEREAS, the insubordination of the Trustees of the Publishing Society is obligating loyal members of The Mother Church and of its branch Churches, who have built up and sustained this great trust donated for their benefit by the Revelator and Founder of Christian Science, Mary Baker Eddy, to cancel subscriptions and withdraw support from the periodicals of their movement, therefore be it

"RESOLVED, that this Church, First Church of Christ, Scientist, in San Francisco, Cal., disapproves of the rebellion of the present Trustees of the Publishing Society against the Manual, and considers the continued tenure of office of the aforesaid Trustees to be detrimental to the prosperity of our Publishing Society and the Cause of Christian Science."

"Very truly yours,

"[Miss] Berenice J. Scoville.

"Secretary.

"First Church of Christ, Scientist,
in San Francisco, Cal."]

Mr. WHIPPLE. The answer is February 13, 1920. Your Honor will observe the letter was January 10th.

[Letter from Warren to First Church of Christ, Scientist, San Francisco, February 13, 1920, is marked Exhibit 46, and read by Mr. Whipple, as follows:

Exhibit 46.

"February 13, 1920

"First Church of Christ, Scientist,
San Francisco,
California.

"Miss Berenice J. Scoville, Clerk.

"Dear Friends:

"The Christian Science Board of Directors instructs me to say, in reply to your letter of January 10, that the Directors do not advise cancelling subscriptions to the periodicals, but they recognize that each Christian Scientist should decide for himself whether to subscribe for them under present circumstances.

"The Directors also instruct me to thank you for your greatly appreciated expression of loyalty.

"Sincerely yours,

"L. C. Warren

"Assistant Corresponding Secretary
for the Christian Science Board
of Directors

LOW: AR"]

Q Mr. Jarvis, who composed this letter of reply [Exhibit 46]?

Mr. CHOATE. I pray your Honor's judgment. This evidence is offered neither against Mr. Fosbery nor against Mr. Bangs or Mr. Hemingway.
The COURT. That must be true.

Mr. CHOATE. There is nothing pertinent to their cases in it. I did not object to the resolution in the First Church, because that is Mr. Fosbery's church; but this is an opportunity just being seized to cross-examine Mr. Jarvis about somebody else.

The COURT. I think that must be true, Mr. Whipple.

Mr. WHIPPLE. Very true, your Honor. Your Honor desires to have what we have to put in from this witness to do entirely with Mr.—

The COURT. With the three respondents.

Mr. WHIPPLE. And with Mr. Fosbery's committee?

The COURT. Yes.

Q What other communications from Mr. Fosbery or his committee, Mrs. Fosbery or anyone who speaks for the Fosberys, or either of them; have you any? A. The only thing I have is a printed report of what I believe Mr. Fosbery has referred to as the second Oakland conference. I do not appear to have a printed report or other kind of a report of the first Oakland conference held on January 3.

Q Have you any communication with regard to it, to the Directors? A. Not that I know of. And I think if I did know of it I would have it here.

Q Have you looked for it? A. Yes, sir. All of these letters bearing on conferences and cancellations have been carefully segregated and kept in that manner.

Q And you say that you have no report with regard to the first conference of Mother Church members? A. Not that we have been able to locate.

Q Have you any communication with regard to the second?

A. We have the printed report of it.

Q That has already been put in? A. I believe so.

Q Was there any letter that accompanied it? A. Not that I know of; no, sir.

Q When was that report received? A. I could not tell without having the report before me.

Q If you would look at it and see when it was received by the Directors? A. Yes, sir. [Examining paper] It was received on March 8, 1920.

Q March 8, 1920? A. Yes, sir.

Q And no letter with it? A. No, sir.

Q Then you received nothing from Mr. Fosbery since? A. No, sir.

Q Now will you take the conference of churches in Chicago,—have you communications with regard to those? A. I think so.

Q All right; let us have that. A. Apparently, Mr. Whipple, these communications are simply from the individual churches in Chicago and not from a conference.

Q Any letters from any chairman of the conference or any of the officials of the conference or committee? A. I

don't recall any such communications. I don't believe we received any.

Q Were you present when Mr. Bangs and Mr. Hemingway called on the directors? A. I was not.

Q Have you had conversations with them since they have been in Boston? A. Yes.

Q Where? A. Here in the court room.

Q At your office? A. No, sir.

Mr. WHIPPLE. That is all.

Cross-Examination

Q (By Mr. Choate) Mr. Jarvis, the report which you referred to from the First Church of San Francisco did not come to you from Mr. Fosbery, did it? A. No, sir.

Q He had nothing to do with sending that, so far as you know?

A. Not to my knowledge.

Mr. CHOATE. That is all.

Mr. WHIPPLE. We asked, if your Honor please, for some correspondence, you will remember, from Mr. Bangs, showing his professional relations.

Mr. CHOATE. Just one more question, Mr. Jarvis.

Q None of the reports or resolutions came from Mr. Fosbery, as far as you know? A. No, sir.

Q (By Mr. Whipple) Well, if no letter came with them you don't know who sent them? A. No, sir.

Mr. WHIPPLE. That is all.

The WITNESS. It was simply a printed circular.

Mr. WHIPPLE. And who sent it you wouldn't know.

Frederick A. Bangs, Recalled.

Q (By Mr. Whipple) We asked you with regard to your activities for Judge Smith in looking up witnesses to be used, or possibly to be used, in the case of Eustace v. Dickey. Have you a memorandum there showing what witnesses you interviewed, or what persons you interviewed as possible witnesses? A. I have the reports relating to those persons who were interviewed here.

Q Without going into the reports, or reading them, I would like to have you give us the number and names of the different people whom you interviewed in Chicago, and the approximate dates when you did it. A. I think I did not interview them; I think it was all done by Mr. Felker.

Q Won't you look at them and see? A. Yes.

Q Take them, so far as you can, in chronological order. A. I don't believe they are in that order.

Q All right; take them as they come. What was that name you used as the name of the person who made the report? A. Captain Felker.

Q What did you say his first name was? A. Captain.

Q Oh, Captain! A. Yes.

Q You have sort of a military organization in your office, Colonel?

A. We have some that have been in the army. Thirteen, I think.

Q Now, will you give us the names and the dates of the interviews?

A. I will see if I can give you the dates. Garth W. Cate—

Q I beg pardon? A. Garth W. Cate. Frank Harris.

Q Now, take Garth W. Cate. When was he interviewed? A. I will see if I can give you the date. (Examining papers.) The date does not appear.

Q Well, how long is your report—a one or two-page report or more, of the interview with him? A. Four pages.

Q A four-page report. Now, did you yourself send that to Judge Smith? A. No, sir.

Q Did a letter go with it? A. That I don't know.

Q Did you look the report over? A. The letters are all here. No, sir; I have never looked over the reports.

Q But your associate in your office sent it? A. Yes. All right. Take the next one. A. Frank Harris.

Q All right. Give us the date of it, how lengthy a report it was and what you had to do with it. A. Frank Harris is three pages. So far as I know I had nothing to do with it.

Q Do you know the date when he was seen? A. The date is not given.

Q Do you know when your report was sent to Judge Smith? A. No, sir.

Q Wouldn't your letter show that? A. It may be in these letters here, that I submitted to you last night.

Q May I take these letters? A. Certainly.

Q So that we can perhaps facilitate this a bit. A. Certainly.

Q All right. Take the next one. A. Henry B. Ely, composed of two pages, no date. So far as I know I had nothing to do with it myself personally.

Q These are all interviews with people to see whether they were to be called as witnesses in the Eustace v. Dickey case? A. They were all interviews with these people for the purpose of forwarding to Judge Smith.

Q To be called in case he thought best? A. I suppose he would use his judgment in regard to that.

Q All right. Give us the rest. A. J. Stratton Taylor. The report consists of one sheet, no date. As far as I know I had nothing to do with it. Henry J. Armstrong.

Q He is the man to whom this Davis telegram was sent, is he not, that was referred to yesterday? A. The one that you produced?

Q Yes. A. The one that you asked about?

Q Yes. A. I think it is the same man, probably, although I had nothing to do with the interview.

Q And his wife is a fellow committeeman? A. Yes.

Q Committeewoman? A. Yes. That is composed of one sheet and has no date, and, so far as I know, I had nothing to do with it personally. Walter Morrison. That consists of one sheet and no date, and so far as I know I had nothing to do with the interview. Robert Walker. That consists of part of one sheet, and there is

no date. So far as I know I had nothing to do with it. A. Porter Joplin. That consists of one sheet and no date, and so far as I know I had nothing to do with it. James A. Hemingway. That consists of one sheet, no date, and so far as I know I had nothing to do with that report.

Q That is a report of what Mr. Hemingway would say if called as a witness, isn't it, or purports to be? A. It is the investigation—it is a report of the investigation, and the interview with Mr. Hemingway at that time.

Q As to what he would state if called as a witness? A. Well, as to that of course I couldn't say.

Q Well, all right. A. Then there is another report here from Garth W. Cate. "Supplemental memo," it is marked. It consists of one sheet, and the date of it is not given. So far as I know I had nothing to do with it personally. John H. Coulter. That consists of one sheet and bears no date. So far as I know I had nothing to do with it. Charles M. Veazey. Consists of two sheets, bears no date, and so far as I now remember I had nothing to do with it. Franklin Hess. Consists of one sheet and copies of letters written by him, bearing date 4-11-19; 4-8-19; and 4-7-19; and I had nothing to do with that report personally.

Q Does that cover them all? A. I think so. At least, it is all that.

Q And was that professional employment all in pursuance of this letter that you received from Judge Smith, dated April 10? A. That, I think, and in pursuance of Mr. Norwood's letter.

Mr. WHIPPLE. I offer this letter, if your Honor please, dated April 10, 1919, on a heading of the Committee on Publication of the First Church of Christ, Scientist.

(Letter, Clifford P. Smith to Frederick A. Bangs, April 10, 1919, is marked "Exhibit 47," and is read by Mr. Whipple, as follows:)

(Exhibit 47.)

Committee on Publication of
The First Church of Christ, Scientist
236 Huntington Avenue
Boston, Massachusetts

10 April, 1919.

Col. Frederick A. Bangs,
First National Bank Building,
Chicago, Illinois.

Dear Colonel Bangs:

The Christian Science Board of Directors has authorized me to engage you to help collect evidence in defense of the action brought by Messrs. Eustace, Ogden, and Rowlands. In particular the directors desire that you talk with Franklin Hess, 6950 Normal Boulevard, Garth W. Cate, 4561 Woodlawn Avenue, and Charles M. Veazey, 7245 Yale Avenue.

I may send you the names of other witnesses, and you may talk with other witnesses in or near Chicago

whose names you may obtain from the three I have mentioned.

Mr. Hess, as you probably know, is a lawyer employed by the International Harvester Company. He has sent a letter to The Christian Science Board of Directors containing information of evidence that ought to support the removal of Rowlands on the ground of having other interests that interfered with his duties as a trustee of our Publishing Society. Possibly your interviewing the persons having more exact and complete knowledge than Mr. Hess might at once secure valuable evidence, and disclose to them that Mr. Rowlands claims to be able to give ample attention to a very important trusteeship here. I am writing to Mr. Hess so that he may expect a call from you.

Mr. Cate is employed by The Christian Science Publishing Society. Mr. Veazey was recently discharged or induced to resign. I will write to both of them also.

From each witness please get a detailed statement of facts from which interrogatories can be prepared here. Please also furnish the name and address of a Notary Public or Commissioner for Massachusetts.

Cordially and sincerely yours,
Clifford P. Smith."

(Stamped "Received Apr 12 1919")

Q That was a regular professional employment, was it not, to assist in getting witnesses? A. I so considered it.

Q And you turned it over to an associate and paid employee in your office? A. Yes, sir.

Q Did you write this letter? (showing letter to witness.) A. I can tell you in a moment. No, sir.

Q Do you know who did? A. Yes, sir.

Q Who? A. Captain Felker.

Q And in pursuit of his employment? A. Yes, sir.

(A copy of the letter above referred to, addressed to Clifford P. Smith, dated April 22, 1919, is marked "Exhibit 43," and is read by Mr. Whipple, as follows:)

(Exhibit 48.)

April 22, 1919.

Judge Clifford P. Smith,
236 Huntington Avenue
Boston, Mass.

My dear Judge Smith

I have just learned, in a conversation with Mr. Hess of International Harvester Co., that Mr. Swift, the assistant sales manager of the company, is now on his vacation, which he is spending in Mississippi. He expects while there to see Mr. Rowlands, and to impress upon him, on behalf of the International Harvester Co., the advisability,—not to say necessity,—of his severing his connection with The Christian Science Publishing Society as trustee, since the Blodgett Land proposition is so tremendous in

its scope and so exclusive in its demands upon Mr. Rowlands' time.

The International Harvester Company has already invested a million and a quarter in the proposition by way of advances, to save Rowlands and his partner and their scheme, and they are of the opinion that they are not being fairly dealt with if Rowlands is to divide his time, when the lumber proposition really requires all his time and thought.

Mr. Swift is in a position to corroborate the information Mr. Hess gave me.

Mr. Hess has access to the correspondence that passed between Mr. Rowlands and the legal department of his company, and I hope to see the same this afternoon. He also had access to the contracts entered into between Rowlands and Crosby and the Harvester Company.

Mr. Hess informs me that Rowlands has built a home at Picayune. Through another informant I have learned that the house in Picayune was fitted up by a Chicago firm of interior decorators.

I enclose herewith a short summary of conversation had with Mr. John H. Coulter, attorney at law, Otis Building, Chicago.

With kind personal regards, I am
Yours sincerely,

P. S.

I should like to call your attention to a discussion and definition of discretion in the case of Tilden vs. Green, 130 N. Y. 312; 27 Am. St. Rep. 487, at 504.

(Letter, Clifford P. Smith to Frederick A. Bangs, April 24, 1919, is marked "Exhibit 49," and is read by Mr. Whipple, as follows:)

(Exhibit 49.)

Committee on Publication of
The First Church of Christ, Scientist
236 Huntington Avenue
Boston, Massachusetts

24 April. 1919

Colonel Frederick A. Bangs,
First National Bank Bldg.,
Chicago, Illinois.

Dear Colonel Bangs:

I have received and wish to thank you for your letters of 17 and 22 April.

I am particularly glad to know that Mr. Swift may try to bring Mr. Rowlands to some sense of his present predicament. It would seem that one aim of Eustace, Ogden, and Rowlands when they obtained an injunction was to cut themselves off from moral influences. They did not want anyone to come and tell them why they should refrain from pursuing their chosen course. Men like Mr. Hess and Mr. Swift ought to be able to produce an effect on Mr. Rowlands, no difference what his present state of mesmerism is.

Cordially and sincerely yours,

Clifford P. Smith.

(Stamped "Received Apr 26 1919.")

Q Has that a technical meaning—

this state of mesmerism? A. I think not.

Q I have heard it used in connection with some communications here, as persons being in a state of mesmerism. You don't know what that means? A. I don't know what mesmerism means?

Q Yes. A. I think I do.

Q So you do know what it means?

A. I think I do know what it means, yes.

Q Has your employment in the capacity in which you were employed in Eustace v. Dickey been terminated?

A. Oh, yes, long ago.

Q Will you tell us when and by whom? A. It terminated with the last person whose report was sent on to Judge Smith.

Q Well, I said when and by whom?

A. Oh, I think it was along about the first of November.

Q Have you any letter terminating it? A. No, sir.

Q Was it terminated in a personal interview? A. No, sir.

Q Then you have not received any discharge from that employment either by letter or by word? A. No; but the work ceased.

Q Well, the work ceased, that is all? A. Yes, sir.

Q But there has been no discharge of your services? A. No, not otherwise than the work ceasing.

Q And that ceased along in November, you say. A. I think so.

Mr. WHIPPLE. That is all.

The COURT. Any further questions?

Mr. WHIPPLE. We shall not take your Honor's time further in putting in evidence.

The COURT. Is there any further testimony?

Mr. KRAUTHOFF. If your Honor please, with respect to our application pending to enjoin the prosecution of this injunction, we have asked that it be enjoined unless upon the condition that it be treated as ancillary to the suit that we brought on the 31st of March. If that relief is granted we should want to introduce some evidence, and I assume it would be more feasible to have the court first determine whether the cases are inter-related, so that one is dependent upon the other, and then permit us to introduce our evidence; or, if your Honor prefers, we can introduce the evidence now. Our theory is that it is a dependent suit, and that whatever injunctive relief Mr. Whipple may be entitled to can only be granted to him upon certain terms and conditions growing out of the issues in the main suit.

The COURT. I do not care to hear any further testimony. Do you wish to argue this case? If there is no further testimony you may proceed with the argument of the case.

Mr. CHOATE. What order would your Honor like to have us take?

The COURT. You may arrange that between yourselves.

Mr. CHASE. I assume we should go forward.

The COURT. The burden is upon the plaintiff, I suppose, although this is an order to show cause.

Mr. CHASE. Yes, your Honor.

The COURT. But I suspect the burden of proof is upon the complainant in the bill, to show that he is entitled to relief by injunction.

Mr. CHASE. We are perfectly willing to go ahead.

ARGUMENT BY FREDERIC H. CHASE, Esq.

I shall be very brief, if your Honor please, I will detain you but a moment. Your Honor has specially in mind, I am sure, the testimony of our clients. I feel very confident that they need no advocates, and I am almost tempted to submit the matter without any argument at all.

Mr. Bangs and Mr. Hemingway are charged in this complaint with a conspiracy to do certain things which are claimed to be unlawful and improper, in company with twelve co-defendants, I think, and it is perfectly plain from the testimony which your Honor has heard that, to almost all those co-defendants, the two defendants whom we represent are as utter strangers as your Honor is. The names of the co-defendants have hardly been mentioned in counsel's examination of our clients. One or two have been merely mentioned, but nothing more. It is perfectly apparent that any acts which they have performed have been entirely independent of any concerted purpose or combination or design on the part of all.

That in itself I suppose, as a matter of law, is sufficient to free them from a joint charge such as is made here, but I do not wish to stand upon any such technical ground, nor do I wish to discuss at this time any question of law which may, and certainly will arise later, in the trial of this cause upon its merits. But take the acts as they are charged and the allegations so far as our clients are concerned as they are made, and we claim broadly upon that proposition that absolutely no cause appears here for injunction to issue against them. What is the proof so far as it comes from the lips of our own clients—and there certainly is no proof concerning them from any other source? We promised your Honor at the very outset of this case, before any testimony was taken, that full and complete disclosure should come to you from them as to every act which they have performed in this respect, and we have kept our promise. They have testified with a thoroughness and sincerity concerning every act which they have done, they have given you every letter which they have written that has been called for, and I think their testimony must have impressed your Honor with its candor, and utter absolute honesty.

Colonel Bangs, in the first place, is charged with having practised his profession; and I suppose, from the at-

tention which has been given to the testimony in that respect, your Honor is going to be asked to enjoin him from practising his profession. He has done certain things in that respect. He has been retained, and he has been paid, as a professional man. He is at present acting as counsel for the Board of Directors in two specific respects, both of which pertain to estates and controversies concerning them which are now pending in the courts. It may be that your Honor will enjoin him in that respect, but I hardly think I wish to argue that matter now, because I anticipate that such will not be your action.

He has in certain other respects practised his profession with this Board of Directors as his clients. Those services are past, and nothing more in that respect is anticipated in the future, so far as the evidence is concerned. I hardly think I need to argue that no injunction should be issued in this branch of his activity, as my brother is so fond of terming everything which has been done here in this respect.

Now, aside from this, the acts which are past—and I am speaking of those which are not in any sense in prospect, I mean the attendance at a convention or conferences of the churches of Illinois, Mr. Bangs was chairman as it happens of that convention. He did nothing during its whole course but perform his duty as presiding officer. Mr. Hemingway was a delegate to that convention, and, so far as I am informed from the testimony, did nothing but vote on the questions submitted to him, which were, I submit, within the jurisdiction of that conference, and the matters which were properly before it.

Now, surely, even if such action were in prospect and not in retrospect, your Honor would not for a moment undertake to enjoin them from participation, such as it was, in any such conference. Somebody has said you cannot indict a nation. This is an effort in some respects to indict a church. Surely your Honor will not hold Mr. Bangs or Mr. Hemingway in any sense responsible for the conduct of that conference and the acts of all of its some six hundred members. That is all that has happened so far as these gentlemen are concerned, with this exception. At this conference, under a resolution, and the only resolution which these gentlemen have at any time supported, a committee was appointed to draw up a petition to be submitted to the chief law officer of this Commonwealth. They were appointed on that committee, one as chairman of it and the other as secretary and treasurer. In pursuance of their duty, and in common with the other members of the committee, the petition was prepared, and they, in pursuance of the direction of the committee, came to Massachusetts, and performed their duty in that respect.

That is what they were doing to the best of their ability at the time when this injunction, or this process or prayer for an injunction, was drawn. That is all they intend to do. That is all they have been trying to do, since this conference has been held. They have nothing whatever in mind to do in the future except to perform their duty as a member of that committee, to act through the law, by the law and under the law, in such a way as is open to them as a legal step. There is absolutely nothing else which they have in mind, and I think your Honor must so find upon their testimony.

I say, in the first place, that even if this hearing were being held before any of the acts which have been shown to your Honor here in evidence were performed, so that they were all in prospect and matters of intention which they had testified that they expected to do, instead of that they had done, as they have testified, your Honor would not issue an injunction to prevent anything that has been done. But I say, with even greater confidence than that, that with their present intention such as it is, with nothing whatever to show anything more that they expect or intend or will try to do, that no injunction should be issued or thought of in this case. I ask your Honor to take them as witnesses, such as they have appeared, bearing in mind that all of the evidence comes from them, to remember also that they are members of the bar, with a sense of legal responsibility of their duty to the law and to the courts, and to refuse to issue this injunction.

ARGUMENT OF CHARLES F. CHOATE, Jr., Esq.

May it please your Honor:

I shall not repeat the general observations so well advanced by my distinguished friend, Judge Chase. They apply to all these defendants, but I direct my attention particularly to the things with which Mr. Fosbery is charged and to the truth or the lack of truth in support of those charges.

In paragraph five of the bill after alleging that Mr. Fosbery is a resident of California the petitioners say that "The plaintiffs are informed and believe and accordingly aver that said Fosbery has been active with the defendants and others in the pursuit of some plan and conspiracy, more particularly in sending out false and misleading reports, statements and information, as alleged in sub-paragraph C of Paragraph 6 of the original bill, and in the dissemination of the printed requests containing false and scandalous statements with regard to said Trustees to be signed by members of the Mother Church as set forth in sub-paragraph D of said Paragraph 6 of the original bill."

My understanding of the rule of pleadings is that by that allegation the plaintiff here is confined to these charges contained in sub-paragraph C of Paragraph 6, and that he is not at

liberty to make a general charge of conspiracy and say that under it he can claim that the defendant Fosbery is guilty of anything that he may happen to think of. But that he is confined to the allegations under C and D. Now has he proved any of the allegations of C and D?

The allegations of C are that the defendant Fosbery in pursuance of a conspiracy "sent out false and misleading reports, statements and information with regard to the administration of the trust by the unjustly and unfairly criticising the conduct and management of their trust by the plaintiffs; and among other things have wrongfully and falsely charged the plaintiffs with having withheld from the Treasurer of the Mother Church large sums of money due from the Trustees to said Treasurer, and that in connection therewith the plaintiffs had made false entries in their own books. Those charges are completely disproved. Not a bit of evidence has been offered in support of them but their denial by Mr. Fosbery, that he never made such statements and there is nothing that tends to support them in the least.

Now D. "In connection with the dissemination of false and misleading statements, and with a view to embarrass, annoy, and vilify the plaintiffs, said defendants have caused to be circulated among Christian Scientists throughout the United States printed requests which they have urged members of the Mother Church to sign, which requests are addressed to the plaintiffs as Trustees, and contain false and scandalous statements with regard to the Trustees, to wit: that they do not obey the Manual of the Mother Church, and do not fulfil the demands of the Deed of Trust, that they are not loyal and faithful and consistent believers and advocates of the principles of Christian Science; while in fact and in truth the plaintiffs do and always have obeyed the Manual of The Mother Church and have faithfully and loyally performed their duties under the Deed of Trust, and have been and are loyal, faithful and consistent believers and advocates of the principles of Christian Science, as has been found to be the truth and the fact in said report of the Master."

Of course the master's report is not in evidence in the case, and it is of no consequence. There is no proof by the petitioners of any one of these allegations that they have obeyed the Manual or that they have faithfully and loyally performed their duties under the Deed of Trust or that they are faithful members of Christian Science. There is not a word in support of that allegation. The only foundation for the extravagant charge in the first part of Paragraph B is Exhibit 16, which is the printed form of the petition comparing it with the charges. The heading of the petition is addressed to the Trustees with their title

and says: "We the undersigned members of The Mother Church, the First Church of Christ, Scientist in Boston, Massachusetts, call upon you to resign your trusteeship because we are convinced that you do not obey the Manual of The Mother Church and you do not fulfil the demands of the Deed of Trust which requires the Trustees to be loyal, faithful, consistent believers and advocates of the principles of Christian Science." There is no support whatever to be found in that paper for the charge that the Trustees have been vilified, or that requests have been circulated and been signed which contain false, scandalous statements with regard to the Trustees, or even any charge or statement that they do not obey the Manual of the Mother Church and do not fulfil the demands of the Deed of Trust. Mr. Fosbery and those with whom he was persuaded to sign the petition, expressed their belief that such was the case. They made no statement of fact beyond their statement of their belief. They have not thought they were violating any Manual. As a matter of fact they have said "We are convinced" we believe that you do not obey the Manual and have to that extent expressed emphatically their opinion or their conviction or belief that such are the facts, and that, we submit, they had a right to do.

Through the lips of Mr. Fosbery I think we have established the fact that he said it in good faith and that it is true. His testimony is uncontradicted, that they have violated the terms of the Manual, that the Manual is the supreme law of Christian Science, that in undertaking to repudiate the authority which the Manual vests—the superior authority which the Manual vests in the Directors and the claim of independence of action vested in them by the Deed of Trust, they have disregarded the Manual. Whether that is the law, isn't the question now for the Court to determine. The question is, when this man said "We are convinced that you have disobeyed the Manual" they had said anything that was untrue or was unjustified. It is entirely consistent with the truth, even if the Court ultimately decides that it is not consistent with the law, that by following the terms of the Deed of Trust they have disobeyed, disregarded the Manual, and it is entirely consistent with truth, even though the Court may ultimately find that it is not according to the law, that in following the directions of the Deed of Trust they have not fulfilled the requirements of the creed of The Mother Church and have not been loyal, faithful, consistent believers and advocates of the principles of Christian Science. If there is conflict, and I say if there is, and every Christian Scientist believes there is not between the Manual and the Deed of Trust because every Christian Scientist believes that the Manual is the ultimate constitution and supreme

law that must control and that because of that fact and that belief whatever the Trustees may have done, what they have done is not obedience to the Deed of Trust in the fulfillment of its terms, it makes them other than loyal, faithful, consistent believers and advocates of the principles of Christian Science, because they have been disobedient to the fundamental principle which leaves the Manual above all other law in the government of the conduct of their members.

Now there is surely nothing scandalous, nothing untrue, there is nothing libellous in the heading of the petition. There is all there is to C and D. If your Honor thinks that I am drawing the lines too closely, when I say that Mr. Fosbery is not charged with violating the provisions of paragraph A, and that on this evidence your Honor would take that into consideration and pass upon it. I then wish to discuss it for a moment.

A is that Mr. Fosbery with others had undertaken to procure the cancellations of subscriptions by Christian Scientists and Christian Science Churches to the periodicals of the Publishing Society.

That we have frankly admitted. He states why he has done it. Now he says that he has done it because he believes, as every other Christian Scientist who is loyal and faithful to the tenets of his Church believes that these gentlemen who are here as petitioners are disobeying the Manual and are publishing literature which is not recognized as the truthful utterances of the organ of the Church. That that literature is being guided, framed, colored by those who are not loyal, faithful Christian Scientists, in that they decline to submit themselves as they must do if they were to obey the Manual which they have all subscribed to, to which they are all solemnly bound to obey and follow to the letter, because they will not submit themselves to that ordinance which provides that the Manual vesting the supreme authority in the Directors and so control it, and because they asserted independent of the Manual, authority and power to exercise it and publish what they please in the Christian Science publications. There can be no question of the right of any individual to entertain that belief. That is the belief Mr. Fosbery has expressed and the right of every individual to read further or to subscribe further for these publications. That right, I submit is not confined to his own action. He has the right to persuade others of the correctness of his own beliefs, and the right to influence others so that they may pursue the same course that he has. The same principle is involved here—though your Honor gently reproved me one day for suggesting that there was any analogy between this and the principle that applies to the concerted action in the pro-

tection of other individual rights—the right of labor, for instance, the right to protect one's self as to property that is in his own two hands. It is exactly parallel to the right to express and entertain an opinion with respect to this kind of publication, and to exert one's influence by persuasion upon others to follow a similar course. Every member of a labor union has the right, as he has the undoubted right, to persuade his fellow laborer to cease working in support of a cause which is a lawful cause. Mr. Fosbery certainly has the right to persuade his fellow Christian Scientists to desist from taking the Christian Science Publications if these are no longer the authorized publications of the Church. But this principle goes vastly further and enters into a realm of thought and doctrine which is tremendously more serious and solemn than that which one enters when discussing the mere economic right to labor or refuse to labor. These persons who are here and have testified so fully and so straightforwardly and have so fully disclosed everything they have done and everything they have written, are here, as you know in defence of their faith. You have been impressed I know, your Honor must have been impressed, as has everybody who has heard the testimony of these men of the sincerity of their belief and the principles they advance. They are here in defence of those principles. Now the proposition that is presented to you, is, that a man in defence of the principles of his faith which he feels are being undermined by those who are renegades, apostates, defiers of the principles of his faith, must absolutely have his lips sealed and his hands tied by a mandate of the Court, and that he cannot use those ordinary methods of peaceful persuasion in order to bring such pressure upon them as will bring about their cessation from the activities which he feels will overthrow the whole structure on which his faith is built.

THE COURT: Let me ask a question. How far does your argument carry you? Suppose there was no contest between the Board of Directors and the Board of Trustees, would the members of the Church, the so-called beneficiaries, be privileged within the law to persuade other people with themselves not to subscribe, or to discontinue their subscriptions?

MR. CHOATE: I think so, yes, if the purpose of it was to preserve the property which is the Trust.

THE COURT: If they thought so.

MR. CHOATE: If they thought so, and in truth and in fact what they are doing is not to injure.

THE COURT: You carry your argument to this, while it might be an interference with contractual relations it wouldn't be interference because of their relation to that prop-

erty. I want to get your idea. Am I right in expressing it?

MR. CHOATE: Yes. What I say is this. What they are doing is not in truth and in fact to injure the Trust fund; it is rather in truth and in fact to help preserve it. What these Trustees are doing, seeking to force upon loyal Christian Scientists a doctrine which they believe to be adulterated and untrue and which Christian Scientists will not receive and cannot be forced to receive, is the injury that is being done to this Trust fund. They are not here getting any property protected or saved from ultimate destruction.

THE COURT: Am I not driven to the consideration involved in my previous question, on the assumption that there is no difference of opinion as between the Board of Directors as to the rightfulness of the conduct of the Board of Trustees, but have any members of the organization, for instance, members of the Mother Church, the right for a cause which they think good to interfere with the success of the publications.

MR. CHOATE: Not for any cause which any individual thinks good.

THE COURT: I say which they think is for the welfare of the organization.

MR. CHOATE: By "they" do you mean the Directors?

THE COURT: I mean the beneficiaries.

MR. CHOATE: I don't think I could contend that for any cause that they think is good, but where there is a clean cut issue as here, the Trustees have taken the position that they are not bound to obey the Manual and it is in the belief, and it is before your Honor on this issue that the Manual plainly makes the authority of the Directors over the publications supreme—

THE COURT: Let me ask again. You say the evidence not being before me I cannot determine as to whether they are or are not, and therefore I cannot say that these beneficiaries are in the wrong.

MR. CHOATE: I say you cannot say they are in the wrong.

THE COURT: Is that another portion of your argument?

MR. CHOATE: Yes. The only evidence that is before you—because the Master's report is not before you—the only evidence is the testimony of Mr. Fosbery, that it is his belief and the belief of Christian Scientists generally that these Trustees propose to violate and disregard the Manual in the publication of their literature, and that Christian Scientists generally believe that the Manual is supreme and that the Directors stand upon that tenet of the Manual and the Trustees of the Publishing Association are against it. That is all you have got before you. I say that on that clean cut issue it is not a question of any beneficiary, any Christian Scientist setting up his own

individual opinion, he is expressing an opinion of a whole body of people who believe as he does, the opinion of the head of his Church against those who refuse to recognize either that headship or that authority, or the supreme law which the Manual expresses, and in support of that supreme law he is entitled to do what he has done. He is entitled to persuade his fellow Christian Scientists to withdraw their support from these publications which do not represent the Christian Science faith. What he is doing is to protect the trust rather than to destroy it. What he is doing is to exercise the right and the duty which is placed upon him by the Manual. This thing is in a pretty narrow compass. It all rests upon the testimony of Mr. Fosbery. Mr. Fosbery's testimony is not attacked and it must be taken as true. It is all the evidence that the petitioners have upon which to base their case. The burden is upon them. I submit, if your Honor please that they have entirely failed to prove either the proposition of fact or of law.

MR. KRAUTHOFF: Does your Honor your Honor desire that we shall present our application for injunction at this time.

THE COURT: No, I do not desire to hear from you at all.

ARGUMENT OF SHERMAN L.

WHIPPLE, ESQ.

May it please your Honor:

It hasn't seemed to me and doesn't seem to me that the case presented by counsel who have just addressed you is the real case that is before you. They haven't mentioned the fact that there is an outstanding injunction which, of course, is a matter that is before the Court.

MR. CHOATE: It hasn't been proved in this case.

MR. WHIPPLE: It certainly has been referred to and is before your Honor. Everything that counsel has said could have been said against—or everything that Mr. Choate has said could have been said against the granting of the original injunction. But this is a fact and it has been practically admitted before your Honor. There is a case of Eustace v. Dickey outstanding. In that case an injunction has been granted and has been served upon the Directors and it covers the Directors and their agents. That injunction was granted for this purpose; the Trustees came to the Court and submitted to the Court a dispute which they had with the Directors. They said the Directors claimed a right to remove the Trustees, and that they had attempted to remove one; that under the Deed of Trust which they submitted to the Court to consider, the Directors had not that right. They had not that right as matter of law; they had not that right as matter of fact, and they asked to be heard upon that question as against the Directors, and

this Court granted them an injunction, for what purpose? It said to the Directors "Until this question is heard and determined by the Court to which the Trustees have submitted it, you must stay your hand. It may be against your doctrines and belief; you may believe as strongly as it can be put that these trustees are wrong; you may believe that you would be justified in attempting to unchurch them, discipline them; you may be justified in your belief that you have the right to put them out, and that they are violating the Manual; you may believe it very very conscientiously, but this legal dispute has been submitted to the Court and until it is determined the administration of justice must not be affected by these extra-judicial measures which it is said you threatened to undertake, by the things which you indicate a purpose to do. You must keep quiet in that respect and submit while the Court is investigating the legal proposition with which it has to deal." Now that is before your Honor and that is the situation. Now the question is merely this: May outsiders, may members of the Mother Church who are subject to the Directors, or the members of other Churches, branch Churches, separate and independent churches in their organization within this Commonwealth attempt to do and do the things which the Directors are forbidden to do, and then come into Court and say, "We conscientiously believe that we have the right to do these things. We think the Manual is being violated by the Trustees." Well, didn't the Trustees think the Manual was being violated by the Directors? That is the very thing that they submitted to the Court, and the Court has said to the Directors, "You must not attempt to accomplish what you desire to accomplish other than in Court proceedings." It says, "You must not attempt it otherwise than having this controversy submitted to the Court and by submitting to the decision which the Court may render. Now the question is merely this: "May other people, out side of Christian Science acting on their own initiative in accordance with what they believe the Directors would like to have them do, or with their approval, come in and do the things that the Directors would do, or want to do, and that the Directors are forbidden to do—I cannot say that they want to. Now this case has been treated by counsel, especially by Mr. Choate as if you had before you a criminal indictment and that we were attempting to prove the allegations of the indictment, on the basis of which they were to be punished, or that the hearing was one to determine whether these men had been guilty of contempt of Court. That is not the question at all. We are not hearing the case upon the merits. We started in to and we

found that it couldn't be done. It is merely a preliminary hearing, for what purpose? The purpose of it is to enable your Honor to determine whether from the conduct—the general conduct of these three men—there is a likelihood that they will in the future do things which your Honor thinks they ought to be forbidden to do because the Directors have been forbidden to do them. You are asked effecte not to uphold the injunction which this Court has already issued. You are asked that by the other side. We ask your Honor merely to extend that injunction which has been granted by this Court as against the Directors to others who attempt to do or want to do, or want to accomplish the same results, by extra-judicial that the Directors are forbidden to accomplish. It is not a question whether they have done this or that, or whether they could be convicted of this or that act under the averments of this supplementary bill, a bill which is purely and ancillary to the main bill in *Eustace v. Dickey*, but the question is as to whether their conduct is such as indicates a purpose and a desire to do things which the Directors have been forbidden to do, things which this Court has forbidden to be done.

Not merely for the Directors to do, because this Court is not concerned as to whether the Directors do them or somebody else does them. The Court is concerned to see that the res of the adjudication, that the subject-matter of the litigation before the Court, preserves its status quo until the Court has finally spoken.

Now that being the situation, what is the proof before you? The proof is conclusive. Not that a hundred thousand Christian Scientists have attempted to do something, and have a certain feeling about the matter, but the proof is that thirty or forty, or perhaps twenty, men who have been attached to, and connected with, the Directors, more or less intimately and in different relations, have taken upon themselves to do what the Directors have been forbidden to do, to accomplish the results that the Directors are forbidden to accomplish by the injunction of this Court.

It has been publicly said: "They are subject to the injunction, and they cannot speak; we will go ahead for them." And that is the attitude of every one of these gentlemen here. And they say as a justification: "We conscientiously believe that the Trustees are wrong. It is our religious belief that they have violated the Manual." Was it any less the religious belief of these Directors that the Trustees had violated the Manual? And still the Directors are enjoined from doing the things that we ask to have these gentlemen enjoined from doing. They are the leaders in a movement which amounts to a con-

certed plan and conspiracy to nullify any favorable decision that this Court may render.

Now, that in its outline is what is proved before your Honor by the testimony of these gentlemen and the correspondence that they have put in. And the question is not whether they have done this or that particular thing. Have they participated and shown the intention of participating in a concerted action to bring about the results which they know the Directors cannot bring about because of the injunction of the Court? Isn't that the inference to be drawn from their studied restraint from speaking to the Directors so that they can be said to be co-operating with them? They come here to a meeting, and pay their respects, and deal with one of the most fundamental and critical questions, as they say, that has ever confronted the denomination, and they do not even speak to the heads of the Church, the gentlemen they recognize as the heads of the Church, about it. They say: "We are going ahead on our own account." Unjustly and unfairly as they think, the Directors cannot speak about it, "and therefore we are going ahead to accomplish the things that they cannot."

And what have they done, and what are they likely to do? They are likely to pursue this conspiracy or concerted arrangement upon which they have entered. They have stirred up the churches—these thirty or these few, we have only a few of them before us, a few of the number, who are stirring and participating with the churches and arousing the churches to take some action which they think will make the litigation nugatory and compel the resignation of the Trustees.

Now, what do we find with regard to Judge Chase's clients? Out in Chicago, as one of them, Colonel Bangs, testified, he moved in his own church that something be done about cancellation, and they apparently took no stock in it, it was ruled out of order. They could have got it in order if they had wanted to. It was turned down, that is perfectly plain. Then Mr. Neal goes out there on the excuse of looking over the ground to see who among the Chicago church leaders shall be promoted to Boston. They have a curious situation for three days. Although there is on the minds of both of them one of the most vital situations that has ever arisen in the faith, they never mention it, they never speak of it to each other. But Mr. Neal has scarcely shaken the dust of Chicago from his feet when we find a conference of churches at which the attorney of the Board of Directors, in their constant employ since this suit was brought, is presiding. And what are those resolutions?

"WHEREAS, Said Manual vests in The Christian Science Board of Directors in Boston, Massachusetts, ulti-

mate direction and supervision of all the properties, agencies, interests and activities of said church, including the Christian Science Publishing Society, its Trustees and its publications;"

Now, didn't Colonel Bangs as a lawyer know that that was the very question involved in the suit here in Boston? And he presides at a meeting where they decided contrary to the Trustees by a "Whereas." And Mr. Hemingway is also a lawyer who does it.

And now apply the test. Suppose the Directors, or one of them, was at that meeting and voted for that resolution and passed it and urged the members to vote it, and attempted to promote it. Why, there isn't a question that there would not one of them dare to be in Chicago, scarcely, at the time; and apparently Mr. Neal went home before any such thing was done. A resolution in effect ousting this Court from its jurisdiction, if they could accomplish what the resolution was intended to accomplish! And:

"WHEREAS, The Trustees of the Christian Science Publishing Society are, and each of them is, guilty of flagrant disobedience to the said Manual in refusing to recognize the aforesaid authority of the said Board of Directors over said Christian Science Publishing Society, . . ."

That means that it was disobedience on the part of these Trustees to apply to this Court to construe their rights under a deed of trust bearing the signature of Mrs. Eddy and made by her irrevocable for all time. And under the direction and headship of these two legal gentlemen in Illinois they resolve that this attempt on the part of the Trustees to appeal to the Court to construe a legal instrument bearing the signature of Mrs. Eddy and every whit as sacred and authoritative as any other thing that Mrs. Eddy ever signed,—I say they make a resolution that the mere application to the Court ought to turn them out of the Church. Again:

"WHEREAS, Said Trustees, in furtherance and emphasis of such disobedience, have instituted and are prosecuting in the Supreme Court of the State of Massachusetts litigation whereby they seek a judicial determination of their alleged independence of the said Board of Directors;"

And two lawyers come here from Illinois who voted for that, and ask to be recognized as practitioners of high standing and intelligence, faithful in allegiance to the Court and to its decrees, when they say that because, "Whereas," these Trustees have applied to the Supreme Judicial Court, we respectfully recommend that you discontinue subscriptions to the publications—to injure the Trustees, to break them down.

And they come here nonchalant and debonaire, and say: "Yes, we passed this resolution that this application to the Court in Massachusetts was an outrageous disobedience of the Manual."

Who is to decide whether it is in disobedience of the Manual? Why, one of them said that every one of them decides for himself, and others say that the Directors are to decide. But the Directors have been enjoined from deciding. The Court has said, "We will decide it." And still they say, extrajudicially: "We will never allow the Court of Massachusetts to decide that. We have decided it. We know what Mrs. Eddy meant. We know what the Directors think Mrs. Eddy meant. And therefore we will say that because in furtherance of their disobedience they have instituted and prosecuted the suit in which they have respectfully submitted their contention to this Court, we will recommend that all churches and all societies try to ruin their Christian Science Publishing Society if they can." Nor is that all:

"WHEREAS, Because of their said acts of disobedience," that is, in refusing to be removed by the Directors, and in applying to the Court to have Mrs. Eddy's sacred trust construed by the Court legally and in an orderly way, and not by mob rule and by opinion,—by that disobedience they say they have been recreant to their trust assumed by them. And the trust is endangered.

It is endangered by what? Endangered by submitting the question of its proper construction to this honorable Court? Just think of it! Lawyers who come here and ask the courtesies and amenities of this bar, and say that the trust of Mrs. Eddy is imperiled because the Trustees have asked the Supreme Judicial Court of Massachusetts to interpret it and to direct them as to their legal duty in the premises!

And they say,—having passed these resolutions and sent them on to the Directors, and brought them on and submitted to the Court,—they are doubtful about wanting to do anything else.

"WHEREAS, The effect of said disobedience of said Trustees and of the said injunction is such that said periodicals are no longer the organs of said church, the Directors of said church having at the present time no voice. . . ."

That is, the appeal to this Court to interpret their trust is disobedience, is the thing which has made them no longer the organs of the Church. That is what they say: that because the Trustees have been guilty of what they regard apparently as a crime, of appealing to the Courts of Massachusetts to construe their trust, their publications can no longer be organs of the Church, although Mrs. Eddy herself created them as organs of the Church, declared them to be organs of the Church, constituted them as organs of the Church, under her trust.

When it comes to disobeying Mrs. Eddy's injunctions in respects like that, they show a wonderful facility in deciding for themselves what Mrs. Eddy meant. They do not hesitate to find for themselves, violate anything in the Manual, if they say they can construe it for themselves the way they like to think, or they believe, Mrs. Eddy meant.

"WHEREAS, It is the duty of the members of The Mother Church to refuse to subscribe for, read or circulate the periodicals so issued by the said Publishing Society until said periodicals are published in accordance with provisions of the Manual; now, therefore"

it is resolved. And they resolve to themselves cancel subscriptions and influence everybody else that they can.

And the men who are stirring that up, the men who are creating all this agitation in the field, acting as they say, as they think probably the Directors would like to have them, but they do not care,—say, under the claim of religious liberty: "Because we feel moved to do it, we ought to be permitted to do that, and break down the protection around this Christian Science Publishing Society of Mrs. Eddy's which has been thrown out by the injunction of this Court already granted."

The question then is not the technical one as to whether they are guilty under any particular indictment. The question is not whether they are now to be punished at the bar of this Court for a flagrant disrespect of its order,—a punishment for contempt. But the question is whether under those circumstances there is in their future action a threat that menaces the proper administration of justice, which menaces the jurisdiction of this Court over the cause which it has assumed to adjudicate, which menaces the effect of this Court's decree provided it should be in favor of the Trustees.

Then the suggestion is made: "But now, having done these things, we ought not to be enjoined, because all we now intend to do in the future is to wait for the attorney-general."

At last, after all their resolutions about the matter, they now say: "All we wish to do is to come here and submit in an orderly way to the adjudication of the Court." The very Court to which in their resolution an appeal was disobedience of the Manual! They now say: "Under the eglis of the attorney-general we wish to come in and submit everything to the adjudication of the Court."

Well, now, if so, and if they do not intend any more of these extrajudicial proceedings, they will not be harmed by any injunction. Why should they be left to change their minds, as Mr. Fosbery changes his mind when he changes his opinion as to whether the Master's findings are to be sustained by the Court?

That throws a light on this change

of mind. He said: "A year ago I made up my mind that if the Trustees' position was sustained I would cancel my subscription." And apparently he kept that in mind; he says he has never changed his mind as to that, but he has changed his mind as to whether those findings are to be sustained. Well, now, having changed his mind as to that, he says he is willing to go ahead with the attorney-general as the leader and let him manage his suit, and abide by its result.

But suppose the attorney-general should not be any more successful in his latest effort than he was in the other one. Then Mr. Fosbery reserves the right, as the others do, to return to their original plan of bringing about the retirement of the Trustees by extrajudicial proceedings. And we

respectfully ask that they be put upon exactly the same plane that the Directors are put upon. We ask as against them the same injunction. We ask as against them the same restraint of their activities as we asked of the Directors.

And they ask of your Honor to be put upon a different plane, to be permitted to do things that this Court has forbidden the Directors to do, to accomplish by extrajudicial means the very things which this Court has said should not be accomplished by the defendants in the case.

THE COURT. I want to say first of all that I do not think that the measure of the duty of these individuals is the same measure of duty as governs that of the Board of Directors. The Board of Directors were told by the

injunction that they should not seek to accomplish anything individually that they were not permitted to do by virtue of their office. And that is all that injunction means.

So far as Bangs and Hemingway are concerned, I do not think there is any evidence whatsoever that justifies the issuing of an injunction.

So far as Fosbery is concerned, I desire to further consider the matter, in view of the difference of testimony. That decision I will be able to give tomorrow morning.

[Adjourned to 9.30 A. M., Wednesday, May 26, 1920.]

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Wednesday, May 26, 1920

BOSTON, Massachusetts — Further proceedings in the case of Eustace et al. v. Harney et al. took place, Wednesday, May 26, 1920, before Justice Pierce, as follows:

THIRD DAY

Boston, Wednesday, May 26, 1920.

The Court came in at 9:30.

THE COURT: In the matter of Fosbery, held under consideration a careful consideration of the question at issue in the case of Eustace v. Dickey and a review of the evidence of the past acts of the defendant taken in connection with his declaration under oath that it is his present purpose to be guided in his future conduct by the direction of the Attorney General of the Commonwealth, leads my mind to the conclusion that the power of the Court to make and enforce its ultimate decree in the Eustace case does not require at the present time any injunctive restraint of the liberty of the defendant to act in the premises as under the law his individual conscience shall dictate.

It follows that the motion for injunction is denied.

We will take up the next matter.

MR. DODGE: Shall we proceed now with the motion for dissolution of the injunction?

THE COURT: Yes.

MR. WHIPPLE: If your Honor please, with regard to all these cases there is no evidence that can be presented that is stronger with reference to any of these gentlemen than was presented with regard to Mr. Fosbery, especially personally persuading people to discontinue their subscriptions and to control their advertising. Therefore if the same ruling that your Honor has made would apply to them and each of them would state as the

other defendants have done under oath before your Honor that they did not intend in the future to take any action except in conformity to the law and in conformity to the directions of the Attorney General in his suit, the Trustees would be content that the same order should be made with regard to them.

THE COURT: That is the underlying thought in that matter and it is a conclusion that has been come to after very great consideration.

MR. WHIPPLE: I understand that is really the basis of your Honor's decision with regard to the other gentlemen. All of them stated whatever their activities had been in the past, whatever view your Honor might take, that in the future they were going to conform to the requirements of the law and abide by the direction of the Attorney General of the Commonwealth.

THE COURT: Abide by the direction of the Attorney General.

MR. WHIPPLE: Yes, abide by the decision in the case.

THE COURT: That perhaps is involved. That is, that they, under the law, shall act as their conscience shall dictate.

MR. WHIPPLE: In other words their religious consciences shall not supersede or override the law.

THE COURT: I do not suppose they would attempt to do it.

MR. WHIPPLE: Your Honor stated that with regard to Mr. Fosbery the order was for the present, I take it without prejudice to any application the Trustees might make in future.

THE COURT: It might well happen that to-morrow there might be occasion to apply to the Court; it might well happen that the Court would feel there was occasion for

issuing an injunction. At present I think there is not.

MR. WHIPPLE: That being so, we are quite content that the same rule should be followed and applied to all the defendants, because the object of this proceeding was to require all these people to conform to the law and act according to the rules of law and not interfere in the future with the administration of justice.

THE COURT: Are counsel willing to make that same stipulation?

MR. DODGE: There is one point as to which we must be perfectly clear. That is, the only point in regard to which the persons whom I represent have been at all hampered by the injunction. They are all Christian Science practitioners and as practitioners they feel that they must have the right to designate to their patients and others if questioned about it, what is pure literature, whether any particular publication is published in accordance with the Manual of their Church. They do not seek to influence the conduct of any one, but they do wish to be free to answer questions which their patients may put to them with regard to that matter.

THE COURT: I do not understand there is anything in the injunction that could by any possibility interfere with that right.

MR. DODGE: There was a very broad clause in the injunction restraining them from doing anything that would in any way injure the business.

THE COURT: I shouldn't have thought so. If I hadn't made this order I shouldn't have thought the injunction extended to any such degree as you are intimating. It says interference with the business of the Trustees which they are called upon to do under the trust instrument. Giving it

its broadest interpretation it wouldn't go so far as that, I shouldn't suppose.

MR. DODGE: It was only by way of extra precaution we construed it that way.

THE COURT: I do not say what conclusion I will come to after hearing the evidence and arguments, but off hand I shouldn't think so.

MR. DODGE: I think all the defendants would agree to take the position Mr. Fosbery too.

THE COURT: The sole requirement of Mr. Whipple is that they shall testify under oath what their purpose is; what they propose to do.

GRACE C. JACOBS, Sworn.

Q (By Mr. Dodge) What is your full name? A. Grace C. Jacobs.

Q You have been or were in the past secretary of the information committee? A. Secretary and treasurer.

Q You and the eight other members of the committee are among the defendants to the original bill in *Eustace v. Harney*? A. Yes.

Q I want to ask you, Miss Jacobs, what your intention is with regard to conduct connected in any way with the subject matter of this litigation? A. My intention is to do nothing beyond what I have already done; not to go beyond the decision of the Court in any way, as I never have done.

Q Have you or your committee done anything more than to give out information? A. The purpose of the information committee was purely to give information.

Q And did the committee regularly decline to give advice as to the cancellation of subscriptions or any other matters? A. We never gave advice written or oral; we always declined to give advice when asked for.

Q And it is not your intention, as I understand it to undertake to influence any conduct on the part of anybody that might be construed as a violation of the injunction? A. No, sir.

THE COURT: Would you like to examine the witness, Mr. Whipple?

MR. WHIPPLE: With your Honor's permission.

Q This information bureau so-called has been closed since the injunction. A. Yes, Mr. Whipple.

Q You have no intention of reopening it? A. No.

Q You expect in your future conduct to let the course of the proceedings in court be free from any interruption by any extra-judicial activities? Do I make myself clear? A. I think so.

Q Is that your intention? A. That is my intention, Mr. Whipple.

JAMES E. PATTEN, Sworn.

Q (By Mr. Dodge) Your full name, Mr. Patten? A. James E. Patten.

Q You served as a member of the information committee? A. Yes.

Q The activities of which occupied I think only about three weeks? A. Not over that, I think.

Q All the members of the committee were made defendants to this bill? A. Of the Executive Committee, yes.

Q Afterwards called the Information Committee? A. Yes.

Q And of them all Mr. Fales, I think, is the only one who is not present here to-day? A. I think so.

Q Do you know where Mr. Fales is? A. I understand he went to California.

Q Was he a particularly active member of the committee? A. No, sir.

Q Or have you any reason to believe that he would not join with the rest of you in the declaration of intention that you may make? A. I have no reason to believe it, no.

Q Have you ever advised conduct on the part of anybody or done anything that could be construed as advice or persuasion? A. I have refused to give advice.

Q Have you any intention to do anything in the future which could be construed in any way as interference with the business of the Publishing Society? A. No, sir.

CROSS EXAMINATION

Q (By Mr. Whipple) You were present in court yesterday when the declarations of Mr. Bangs and Mr. Hemingway and Mr. Fosbery were made before his Honor, were you not? A. I don't think Mr. Hemingway's declarations were made yesterday, were they?

Q Perhaps not. You were here yesterday? A. Yes.

Q You subscribe to those declarations as to future intention, as to obeying the Court? A. In what way do you mean?

Q I mean the declarations made as to their future intention of being loyal citizens. I thought you had heard them. I will put the question directly. Do you intend as far as you are concerned to allow controversies as between the Directors and the Trustees to be settled entirely by the Court within the jurisdiction of the Court without interference and without extra-judicial activities. A. That is my intention.

Q To do nothing that will interfere with the absolute submission to this court's jurisdiction of that dispute? A. That is what I intend to do; that is what I have intended to do.

MR. DODGE: Before calling the next witness I want to make one statement. There is, as I understand it, at present no intent to reopen the office of the information committee. I do not understand that the witnesses should be called upon here to expressly agree not to reopen that office.

THE COURT: I do not understand they are so called upon.

MR. DODGE: The first witness was

asked if there was any such intention. It may be reopened at some time.

THE COURT: The fundamental question is, do they intend to abide by the orders of the Court which have been made and which shall be made, to do nothing which shall interfere so far as they have any volition about it whatsoever. That is stronger perhaps than they put it.

MR. WHIPPLE: We can conceive of activities of a real information bureau, or information committee, one to give information to the field which shall be fair and unbiased—there is a scope for that and we do not object to that at all. It is only such information as is plainly intended on the face of it to prejudice the field unduly and unfairly and to supersede by that prejudice the Court's power to deal with the problem before the Court.

THE COURT: What you object to is propaganda.

MR. WHIPPLE: And unfair propaganda.

MR. DODGE: If the committee is reestablished it will give out only fair information as to the facts.

MR. WHIPPLE: Then they won't be interfered with or complained of.

EMMA W. FLETCHER, Sworn

Q (By Mr. Dodge) Your full name, Miss Fletcher? A. Emma W. Fletcher.

Q You have been a member of the information committee? A. Yes.

Q Does your intention as to what shall be done or what you shall do in the future accord with that of the last two who have testified? A. It does.

MR. WHIPPLE: No cross examination.

ADELE M. MARSH, Sworn.

Q (By Mr. Dodge) What is your full name, Miss Marsh? A. Adele M. Marsh.

Q You are also, or have been a member of the information committee? A. Yes.

Q I take it that you have done nothing at any time which you believed to be in any way an interference with the progress of the case of *Eustace v. Dickey*? A. I have been very careful not to do so.

Q And as to the future conduct you have the same intention? A. I have.

CROSS EXAMINATION

Q (By Mr. Whipple) Your intention accords with that of the last two or three witnesses who have testified, doesn't it? A. Yes.

JOHN W. LAUPPE, Sworn

Q (By Mr. Dodge) You are a member of the information committee? A. Yes.

Q What do you say as to your intention as to your future conduct? A. The same as the other witnesses have testified.

MR. WHIPPLE: That is all.

MARY N. BARTLETT, Sworn.

Q (By Mr. Dodge) Miss Bartlett, your full name? A. Mary N. Bartlett.

Q Is your intention as to the future the same as that expressed by the others? A. It is.

Q Have you done anything in the past that was not consistent with that same intention? A. I have not.

MR. WHIPPLE: No questions.

CHARLES F. HACKETT, Sworn.

Q (By Mr. Dodge) Your name, Mr. Hackett? A. Charles F. Hackett.

Q You have been an active member of the information committee? A. Yes.

Q I want to ask you this question which has been suggested. In anything that you have done individually or as a member of the information committee have you acted after consultation with the Directors? A. No, sir.

Q So far as you know were the Directors consulted or did they know of the formation of the information committee? A. No, sir.

Q What is your intention as to your future conduct? A. That expressed by former witnesses.

MR. WHIPPLE: That is all.

LUTHER P. CUDWORTH, Sworn.

Q (By Mr. Dodge) Your full name is Luther P. Cudworth? A. Yes.

Q You were chairman of the information committee? A. I was.

Q Have you done anything at any time in collusion, so to speak, with the Directors? A. Absolutely not.

Q Direct or indirect? A. Direct or indirect.

Q Have you done anything at any time which was in your judgment an interference with the conduct of the other case or with the injunction in that case? A. Not to my best knowledge and belief.

Q I understand that there is at present no intention of reestablishing the information committee? A. Not as far as I know.

Q You do not wish to be understood as agreeing that it shall not be reestablished if occasion seems to require it? A. I prefer not to make such agreement.

Q What is your intention, is it the same as that expressed by the other witnesses? A. Yes, to obey the orders of the Court, as it has been in the past.

NO CROSS EXAMINATION

Mr. Whipple: We do not wish now to cross examine with regard to the relation of these activities to the Directors because it is perhaps beside the mark, nor do we wish to cross examine with regard to the activities of anybody in the past except to say that we believe we could establish clearly that the activities were such as if continued would interfere with the proper administration.

THE COURT: I think there is a strong argument to that effect.

MR. WHIPPLE: It is with the expression as to the future that we are content, whatever may have occurred in the past. As we have heretofore said we do not care to ask for punishment, we asked simply that these activities should be so reduced as to not interfere with the jurisdiction of the Court. I do not care to ask any further questions.

MR. DODGE: Of course we ask opportunity to go in the fullest measure into what has taken place and we understand we shall have that opportunity at the trial of this case on the merits.

LEWIS L. HARNEY, Sworn

Q (By Mr. White) What is your name? A. Lewis L. Harney.

Q At some time you have been private secretary to Judge Smith? A. I was from August 1, 1918, to December 26, 1919.

Q Will you state whether or not at the present time in your opinion you are amenable to the inhibition of the injunction issued in the case of Eustace v. Dickey?

Mr. WHIPPLE: Just a moment. I don't think that can be very helpful. The COURT: It isn't for him to say whether he is or not.

Mr. WHIPPLE: His opinion on that subject of course cannot be very persuasive.

Mr. WHITE: If your Honor please, there is a reason for it. He is amenable to that injunction and therefore it is not necessary for him to be enjoined at this time, at any rate.

The COURT: If you want to excuse him from the effect of the injunction you want to pursue those tactics.

Q Mr. Harney, what is your intention as to the future in respect to acts with which you have been charged in the Bill of Complaint?

A The same as it has been since the occasion of my leaving the office, and do nothing only as I see it individually.

Q Do you intend to do anything which has for its purpose interference with the rights of the plaintiffs, as they are sought to be established in the suit of Eustace v. Dickey? A. I have not since that time and I do not intend to.

Mr. WHITE: That is all.

Cross-Examination

Q (By Mr. Whipple) Well, now, let me ask you. Do you intend so far as your personal activities are concerned, to abide purely and entirely by the decision of the court in Eustace v. Dickey, and not in any way to attempt by outside and extra-judicial activity to influence that decision or interfere with it? A. If you mean by that, Mr. Whipple, that I expect to take the periodicals, I will have to say No.

Q Why, no; nobody cares whether you take them or not, sir. A. All right. Then I am perfectly willing to abide by it.

Q Abide by what? A. Abide by the decision of the court.

Q And restrain your activities so as not to interfere with the jurisdiction of the court? A. I have not interfered with the jurisdiction of the court.

Q Well, I don't care whether you haven't in the past or not, sir. That is a different question. Do you intend to in the future?

A I do not, except as to have the ability to express my views.

Q Well, whom are you going to express your views to? A. If I am asked in accordance with the question that Mr. Dodge asked, because I am a Christian Science practitioner—

Q You mean if somebody seeks your views as a pupil of yours you want to feel at liberty to instruct them? A. I do not expect to instruct them. I expect, as the court has granted, as I understand it, the privilege, to answer questions as to the literature—what I feel in regard to the literature.

Q And that is the only reservation you make? A. That is all.

Q Otherwise than that you intend to abandon, or intend to refrain from any activities that might interfere with the jurisdiction of the court? A. I do.

Q Or its proper hearing or decision in that case? A. Yes.

Mr. WHIPPLE: That is all.

RICHARD J. DAVIS, Sworn.

Q (By Mr. White) What is your name, Mr. Davis? A. Richard J. Davis.

Q You have been acting as the treasurer of the Employment and Aid Committee since its formation? A. I have.

Q And as such treasurer will you state briefly what your activities have been? A. My activities have consisted in caring for the ex-employees of the Publishing House, those who have either been discharged or resigned, until they found positions, and I have also assisted in finding them positions.

Q And as a result of your activities have you received a considerable sum of money from the field? A. I have.

Q And have you still unexpended some of that money? A. I have.

Q Will you state what your intention is as to the future in respect to the money which you now have in your possession? A. My intention is to expend it as seems right in caring for any one that needs to be cared for.

Q How many of the resigning or discharged employees of the Publishing Society are you now assisting? A. I should say possibly ten, ten or fifteen.

Q The rest of them have been employed? A. The rest of them have found employment, yes sir.

Q Do you intend in the future to take any or do any act which would in any way interfere with the rights of the plaintiffs in this action which they seek to have established in the suit of Eustace v. Dickey? A. I do not.

Mr. WHITE. That is all.

Cross-Examination

Q (By Mr. Whipple) Asking with reference to the future, have you any intention or purpose to attempt to influence present employees of the Publishing Society to leave their employment? A. I have no such intention.

Q You state that without any reservation? A. Without any reservation.

Q Either directly or indirectly? A. Directly or indirectly.

Q Either to solicit them or encourage them to leave? A. Either to solicit or to encourage them.

Q Or to have any interviews with them for that purpose? A. Or to have any interviews with them for that purpose.

Q Or to induce others to? A. Or to induce others.

Mr. WHIPPLE. That is all.

Q (By Mr. White) Have you ever done any of those things, Mr. Davis? A. I never have done any of those things.

Mr. WHIPPLE. As to the last question, we do not wish by failing to cross-examine to assent to that. I am speaking of it so that if the question should arise again before your Honor, or before this court—

The COURT. I do not take it so.

Mr. WHIPPLE.—we would not appear to have precluded by simply not cross-examining.

The COURT. I do not take it that you were concluded at all. The matter is being addressed to the discretion of the court as to whether or not under the circumstances, the court having issued the injunction, it shall continue it.

Mr. WHIPPLE. My questions of course are addressed purely to the future—

The COURT. I understand.

Mr. WHIPPLE.—as I understood your Honor desired to have it done.

The COURT. Yes.

WILLIAM P. MCKENZIE, Sworn

Q (By Mr. Parker)—What is your name? A. William P. McKenzie.

Q You were a personal pupil of Mrs. Eddy? A. I am thankful to say that I was.

Q You were one of the original donees under the Deed of Trust which is relied upon in this action? A. Yes.

Q Served continuously as a trustee until 1917? A. Yes.

Q And as editor from then until March 12 of this year? A. I did.

Q Since you resigned as editor what has been your occupation?

A I have attended to my private business as a practitioner of Christian Science, and as a teacher.

Q That is, you are a practitioner and a teacher of Christian Science? A. Yes.

Q What is it your intention to keep on doing? A. I shall continue in that business of the practise and teaching of Christian Science.

Q Do you propose to do anything else in regard to this case except to defend the litigation in which you are now a defendant?

A Nothing else, except to make a good defense.

Mr. WHITE. That is all.

Cross-Examination

Q (By Mr. Whipple) Mr. McKenzie, you do not intend to take any action in the future for the purpose of accomplishing by practical means what the directors are attempting to accomplish by their defense in court? I mean, any extra-judicial activity.

A Certainly not.

Q You remember, Mr. McKenzie, that you did give an interview after leaving the employment of the Publishing Society to a reporter of the Post, did you not? A. I did.

Q And you gave in that a statement which undoubtedly you may have believed to be true, with regard to your successors, which was not correct? A. I said nothing at all about my successor, sir.

Q Didn't you speak of Sir Henry Japp? A. I did not.

Q You know that in the Post they published a statement that you made, that he was to be your successor, did you not? A. I do not.

Q You didn't see it? Well, whatever it may be, you do not intend to give any further statements of that— A. Leave out the word "further," because I did not make such statements.

Q Well, I meant any further statements in regard to your position with reference to the—

The COURT. "Future" in place of "further."

Q Future statements? A. Yes.

Q You do not intend— A. I do not intend.

Mr. WHIPPLE. If your Honor please, I think it is only fair to say that Mr. McKenzie apparently was misquoted in the article in the Post, because it did state very clearly, attributing it to him, that he made that statement.

The COURT. Now, this covers all the defendants?

Mr. WHIPPLE. No, your Honor. There is a person by the name of Applebee, alias Almon. He has entered an appearance pro se.

The COURT. What do you desire to have done with him?

Mr. WHIPPLE. I should like to have that stand as it is, if your Honor please—

The COURT. No application.

Mr. WHIPPLE.—because his case is differentiated a good deal from the others, many of whom were simply members of the committee, the activities of which were conducted—

The COURT. At all events, there is no application made?

Mr. WHIPPLE. Yes.

The COURT. The injunction, so far as the individual defendants are concerned who have appeared and testified, is dissolved.

Mr. KRAUTHOFF. If your Honor please, may I ask, in justice to the membership of The Mother Church, that it be recorded by the stenographers that the gentleman who is proceeded against under an alias is not a member of The Mother Church.

Mr. WHIPPLE. We understand that to be the fact, if your Honor please.

The COURT. (To the Clerk) Those who have appeared and testified. The Clerk calls my attention to the fact that there is one other person. The form of the order is as to those persons who have appeared and testified.

Mr. DODGE. How about Mr. Fales, your Honor?

Mr. WHIPPLE. May it please your Honor, we should like to have that matter rest until Mr. Fales comes in, and upon his statement in the presence of your Honor, or a justice of this court, to the same effect as the others, we should not be opposed to its being dissolved.

The COURT. On his making exactly just such a statement.

Mr. WHIPPLE. And I may say what perhaps your Honor did not catch, that Mr. Almon or Applebee we do not understand is a Christian Scientist or a member of any church. We understand and allege the fact to be that he was employed by certain people to give out false statements, and did give them out, to certain newspapers.

Mr. PARKER. Will your Honor take up the motion for a Master at this time?

The COURT. Let me see what the papers are. Have you the papers here?

Mr. WHIPPLE. Unless your Honor wants to look at the papers first, I would say that the motions which have been made, and the motion that we desire to make, might properly be considered first so as to have the issues defined.

The COURT. This is the motion you made the other day?

Mr. WHIPPLE. Yes, your Honor.

The COURT. To strike out?

Mr. WHIPPLE. And the motion that we indicated that we desired to present to your Honor, to vacate the order permitting the filing of the crossbill, or to demur to the crossbill.

The COURT. Yes.

Mr. WHIPPLE. And whatever seemed to be the proper procedure to raise the question which was discussed before the court the other day.

The COURT. I have heard all that should be said, I think, upon either branch of that case. I think that you have the right to have the bill amended by substitution as you have desired, and that motion is granted. If you desire to raise the question as to

whether or not under the amended bill the crossbill will lie, you have the opportunity by demurring to the crossbill to raise that question. I will not pass upon that at the present time.

Mr. WHIPPLE. We should like, and I think perhaps all the parties would like, to have that decided by your Honor, since your Honor has given so much attention to it. Possibly we might have that set down for Friday, if that would be agreeable.

The COURT. Well, I have the thought that it is probably impossible, if things go as they should. I have a habeas corpus case, which has the right of way, on Friday, which involves the examination of witnesses.

Mr. WHIPPLE. At present we think we shall file a demurrer.

The COURT. I think that as to the matter which is involved in the crossbill, any justice can hear it just as well as I possibly can, because it involves pure questions of law, in which questions of fact are not involved at all.

Mr. WHIPPLE. Our only purpose of retaining the bill is to meet future exigencies.

The COURT. However that may be—

Mr. WHIPPLE. Such as your Honor has indicated.

The COURT. —you are fully able to take care of yourself, I think.

Mr. WHIPPLE. The future seems to have been dealt with this morning.

The COURT. The situation is this: That the motion to amend the bill as filed is allowed; in the matter of the crossbill it will be for you to determine what steps shall be next taken, and the matter may be brought up by the filing of a demurrer or by any other pleading you see fit to file, which may be agreed upon or the court shall order. Now, that being so,

I don't see what there is to send to a Master.

Mr. PARKER. It might be well, perhaps, to defer that until those pleadings are completed.

The COURT. The proposed amendment leaves the bill where I thought it was intended to be in the beginning. Whether or not a crossbill may be filed under such circumstances, whether the parties have any rights to raise any issue other than the question as to whether the injunction should issue under the prayers, I will leave open for future discussion. I do not think there ought to be any reference to a Master at present.

Mr. PARKER. The bill as amended, your Honor, is a prayer for a permanent injunction, based upon the allegation that these defendants, at the instigation of the Board of Directors, have conspired and joined together in a scheme to induce employees of the plaintiffs to leave their employment, and customers of theirs, churches and individuals throughout the world, to cancel their subscriptions. The motive is material. It seems to me that the issue has not been taken out by these amendments, which we all expected, in any way; that the issue is still, Why did the employees resign, why have the churches cancelled their subscriptions? We desire very much to have the fullest opportunity to present the defense that the Christian Scientists of the world do not act in any such way, they are not subject to any such influence, they decide these matters as individuals themselves. What they resent here is the assumption of absolute authority over the editorial policy of the periodicals of this Church by the trustees, an authority which the trustees have never had, and they never claimed they had until the suit of Eustace v. Dickey was well along, and

then by counsel; that the action taken by these various churches and individuals would have been taken whether that suit was pending or not; that when they see—

The COURT. Let me ask you a question. Are the pleadings completed on the assumption that the bill is amended?

Mr. PARKER. I beg your Honor's pardon?

The COURT. Have the pleadings been completed on the assumption or with the idea that the bill has been amended? I ask that question because Mr. Choate had, I think, in some other matter that he had, an alternative answer, or some one of the parties had one.

Mr. PARKER. They have not, your Honor.

The COURT. Then I could not make any order or direction as to a Master in any way whatsoever. It would be beyond my power, I mean practical power.

Mr. DODGE. The amendment merely struck out certain allegations in the bill, didn't it?

Mr. WHIPPLE. It added some.

The COURT. I do not think anything can be done until after it can be seen what, fully understood, the effect of the amendment is, and the pleadings completed. Upon that being done, of course, application can be made for a Master, and it goes without saying the facts will not be determined by the court and a Master will be appointed at some time.

(Adjourned.)

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Saturday, July 10, 1920

BOSTON, Massachusetts—Pleadings to the information of the Attorney-General were completed on Saturday, July 10, 1920. Answers were filed by all the defendants except the Trustees of The Christian Science Publishing Society and Mr. Dittmore, who filed demurrers.

The Trustees of The Christian Science Publishing Society, in demurring to the information in equity of the Attorney-General in the Christian Science litigation, averred that many of the issues presented by the Attorney-General have once been settled, and that he no longer has any standing in the case. The demurrer sets forth that after Judge Frederick Dodge, as master, had decided several of the issues involved "adversely to the contentions now made by the Attorney-

General," that official, "upon being requested by those interested in upsetting the findings of the master, sought to intervene in that case." The demurrer recites that the court denied the motion to intervene, and that the Attorney-General did not take an appeal from that decision, and therefore he should not be permitted to enter the case through another proceeding.

The Trustees deny the contention of the Attorney-General that The First Church of Christ, Scientist, is a public charitable trust, and declare that, even if it were to be admitted that such a trust exists, the information contains no charges of mismanagement to justify the courts in interfering with it, and further assert that the establishment of such a trust would be in direct contradiction to the

express provisions of Mrs. Eddy's Deeds of Trust of September 1, 1892, and January 25, 1898.

Mr. Dittmore's demurrer, in addition to the reason set out in the Trustees' demurrer, points out that the information uses the term "Christian Science Board of Directors" generally, without specifying whether the Trustees under the deed of 1892 are meant, or those persons and one other who are acting as Directors under the By-Laws contained in the Manual, and points out that the information discloses conduct on the part of the directors, in attempting to remove Mr. Rowlands as a trustee on charges which were not believed by them to be true, and in voting to remove Mr. Dittmore on charges which were, in part at least, not made in good faith,

which would warrant the Attorney-General in asking their removal as trustees of a public charitable trust, but that the Attorney-General does not appeal to the court for this relief.

Mrs. Emilie B. Hulin, Mrs. Julia S. Bartlett and Mary F. Eastaman, as First Members of The First Church of Christ, Scientist, have filed an answer to the Attorney-General's information. These defendants enter

the case as First Members and claim that they and others associated with them as First Members have the right to proceed in the case rather than the Attorney-General, who wants to have The Mother Church decree a public charitable trust, with the result that its management would be conducted according to the dictates of persons named by the court as the governing board.

The answer sets up that Mrs. Hulin and her associates as First Members are ready and willing to do and perform any acts which may be necessary or advisable to preserve and protect the polity of The Mother Church and the interests of its members and the cause of Christian Science. Mrs. Hulin asserts that there are 63 First Members in good standing, who are capable of conducting the affairs of the church.

Wednesday, July 14, 1920

BOSTON, Massachusetts—Mr. Justice Braley, of the Supreme Judicial Court of the Commonwealth of Massachusetts, July 14, 1920, heard arguments on the motion to send the case of The First Church of Christ, Scientist, in Boston, Adam E. Dickey, et al. v. Eustace, et al., to a Master, and upon the question of the disposition of the cases of Krauthoff v. The Attorney-General, et al., and The Attorney-General v. Eustace, et al. In the first-mentioned case, Judge Braley ordered that the case should stand for reference to a Master until after the decision of the Full Court in the case of Eustace, et al. v. Dickey, et al. Consideration of the demurrers in the case of Krauthoff v. The Attorney-General, et al., was postponed until the second Tuesday in September. The case of The Attorney-General v. Eustace, et al., was reserved for determination by the Full Court on the questions raised by the Attorney-General's bill, and the demurrers filed by the Trustees of The Christian Science Publishing Society, and John V. Dittmore. The arguments upon these questions in the three cases above mentioned were as follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
SUFFOLK, ss. IN EQUITY
FIRST CHURCH OF CHRIST,
SCIENTIST v. EUSTACE et al.
BEFORE MR. JUSTICE BRALEY
Boston, July 13, 1920.

Appearances: Mr. Krauthoff, Mr. Dawson, Mr. Whipple, Mr. Withington, Mr. Allen, Mr. Abbot, Mr. Choate, Mr. Nash, Mr. Bates, Mr. Dane, Mr. Abbott, Mr. Buffum, Mr. Thompson, Mr. Buffum, Mr. Demond, Mr. Parker, Mr. Morse.

MR. BATES: This is a motion for the appointment of a Master. I assume it will take a few minutes. A motion that the case be sent to a master.

THE COURT: I understand, at least it was understood the other day, that all the interlocutory matters in this

case had been disposed of and that the case stood upon the bill and answer and a general replication. Is that correct?

MR. BATES: I understand so; yes.

THE COURT: Very well. I put it over until this morning to hear any one who may wish to talk about it, whether the case should be sent to a master or not; that is all there is to it. What have you to say about it?

MR. BATES: I wasn't present the other day—

THE COURT: Of course that does not mean that I shall immediately send the case out to a master; it means the docket entry will be, the docket entry will be, case to be referred to a master, but the decree of reference, the order sending it to the master will be entered later, after the decision in the other case pending. It will take the case off the list and put it where it belongs, if it becomes necessary to send it to a master, either singly or with the other case. Do you wish to say anything about it?

MR. BATES: No; that is entirely satisfactory.

THE COURT: Anything to be said on the other side?

MR. WHIPPLE: We have felt, if your Honor please, with regard to this bill that it is probably a good bill if it were brought in behalf of the treasurer of the Church for an accounting. But if that is all there really is to the bill proper for a hearing on the facts, because we think that all the other matters have been practically concluded by the findings of the Master appointed by your Honor in the suit of Eustace v. Dickey, and that Master's report is now pending for hearing before the Full Court, we should have demurred to the bill except for this prayer for an accounting, in which we think the Directors of the Mother Church as Directors have no part, no right to be heard or be a party, and probably the Mother Church as such would have no right because the beneficiary under the trust is the treasurer of the Church. However, that is probably a technical matter and the fact that the Church is a party would make no particular difference. But really the object of the bill, the real object of the bill, is we think, an

attempt, as is made of these bills here, merely to retry in some form or other the issues which we think were settled as far as the facts are concerned by Judge Dodge's finding, and we feel strongly that there should be no rehearing upon those until the Supreme Judicial Court has given its ruling with regard to the Master's report that is before it.

It hadn't occurred to me, the procedure which your Honor has suggested—it hadn't occurred to me that you could simply refer it to the Master and then not send it out until there should be a decision in Eustace v. Dickey. It is not perhaps of very much consequence to us whether that procedure be taken or not, but I would offer this suggestion, that that might better be decided, perhaps, after the decision of the Full Court. I think that is a procedural matter in which counsel probably cannot assist the Court very much. We should accept your Honor's decision in the matter. It had occurred to me when the suggestion was made, that the determination as to just what issues should be heard by the Master might be more properly determined after the decision of the Full Court, because it might occur that some issues were open that we think are not now open. The point has been taken that as far as the removal of the Trustees is concerned, which is sought in this bill, removal by order of court, that that can only be in a bill where the Attorney General is a party. We asked to have him made a party in this suit, but the Court denied that motion. If the case is to go to a master, it occurs to us there ought to be a limitation and direction with regard to the issues, whether, if your Honor should order it to a master, that question ought now to be determined or whether it could be determined later. I venture no opinion because, as I said a moment ago, it is a procedural matter purely and I feel I could be of very little aid except by offering this suggestion.

THE COURT: Mr. Clerk, you may make a docket entry, the case to stand for reference to a master when such procedure becomes necessary. That takes it off the docket. When the time

comes we will determine whether the issues shall be defined.

MR. KRAUTHOFF: In this case, if your Honor please there are a number of demurrers to the bill.

THE COURT: Did you also say to me the other day that there were pleas?

MR. KRAUTHOFF: It is a little difficult for me to analyze some of these pleadings; some are in the nature of pleas also, very elaborate pleadings.

THE COURT: How many sets of pleadings are there in the case?

MR. KRAUTHOFF: I think at present it may be fairly said they are all demurrers, because the bill was amended and then demurrers were filed to the amended bill and I assume that displaces all the pleas and answers that were filed before the amendment. That is, to the original bill there were answers, pleas and demurrers filed.

THE COURT: What disposition was made of the original demurrers and pleas, if there were pleas?

MR. KRAUTHOFF: None. That is to say, if your Honor please, on April 9, Mr. Justice Pierce directed that the pleadings be completed without disposing of the demurrers then pending and pleadings were completed. After the pleadings were completed in the form of demurrers pleas and answers, the bill was amended and then to the amended bill demurrers have been interposed by the Trustees of the Publishing Society and Mr. Dittemore, a former Director, and the Attorney General. Then there is a pleading on file by Mrs. Hulin, which it is a little for me to analyze. It is an explanation why they should not be required to plead at all. It is an explanation from the point of view of that defendant. There is a demurrer too on behalf of the defendant Bartlett and a pleading on behalf of Mr. Tomlinson who is sued as one member of a class, saying that he should not be compelled to answer because there are other members of the class before the Court. If your Honor please it is a suit brought on behalf of the members of the Mother Church in which I desire to present an application to join another member as party plaintiff.

THE COURT: You never have set down the case in any way for hearing on the bill and pleas? I am not speaking now of demurrers.

MR. KRAUTHOFF: We did set the case down for hearing on pleas and demurrers at one time before Mr. Justice DeCourcy, and then also—

THE COURT: Have there ever been any replications filed to the pleas? I don't know what they are, of course.

MR. KRAUTHOFF: We have taken issue under the rule of Court.

THE COURT: No. You filed a general replication?

MR. KRAUTHOFF: As I understand the rule, the expression is "to take issue with the plea".

THE COURT: I will look at the text.

MR. KRAUTHOFF: That was the expression I found. It is a little difficult for me to analyze these pleadings. They are such interesting documents. I don't know whether they are answers, demurrers or pleas. I filed a general replication.

THE COURT: I shouldn't suppose there would be any difficulty about it. I don't know what form the pleadings are in.

MR. KRAUTHOFF: I think we will all agree when we progress in this case that the rule of pleadings seems to have taken a vacation in this Christian Science litigation.

THE COURT: I don't know about that. I presume you are familiar with what a plea in equity means. Possibly, if I may put it in that way, are also familiar with some of the pitfalls if you are not pretty careful.

Your general replication is sufficient, of course. If your suit goes down for hearing on the bill and plea without the replication, then the allegations of fact, if there are allegations of fact in the plea, must be taken as true. The only question then for decision is whether as matter of law the bill must be dismissed under the plea.

MR. KRAUTHOFF: I haven't set the case down.

THE COURT: Outside of the answer, under our rule of equity, you may combine special matters which may formally be raised by plea and demurrer. I am not aware of any kind of pleading which can combine a plea and demurrer separate and distinct from the general issue.

MR. KRAUTHOFF: I think when your Honor comes to examine these pleadings, your Honor will find they are rather unique.

THE COURT: What I want to do in this case, if it could be done, was to send up to the Full Court the question, the main question, whether the allegations to your bill could be maintained. That issue can be raised by demurrer setting forth the grounds that it does not state a case in equity; but evidently, from what you tell me, that would need inquiry which has got to be gone into in a number of matters. To reserve the case in that form I must send it up properly, if at all, after going into all these special matters, then of course the record has got to be cleared in some way. Ordinarily there is no difficulty about it because the pleas or demurrers to the amended bill takes care of all the fundamental matters which were raised by the original demurrers and pleas; but I cannot tell whether that is so in this case.

MR. KRAUTHOFF: Any pleas, if your Honor please, that are in this case arose in this way: When the original bill was filed two defendants, Mr. Dittemore and the Trustees of the Christian Science Publishing Society in their answers interposed a

plea, as we understand it, alleging that Mr. Krauthoff was of counsel in the previous case of Eustace v. Dickey, and that he was entirely in control of that case, and being so, that he was bound by what had happened up to date in the former case and that it was against public policy to permit him as a member to do what it is claimed he failed to do as a lawyer.

THE COURT: I do not intend to cut you off on anything material to the one thing I am considering. I will hear you more fully at the proper time. It is very evident I cannot reserve this case to the Full Bench without taking it up from the very beginning, that is, at the point where the original bill and these various special matters were set up, and then going on with it. Very likely, to clear the record—it does not hurt you any—the demurrers could be sustained on certain grounds and then you amend and then the demurrers and the amended bill presented on the fundamental issues. But the record has got to be cleared. Now to do that requires not merely the arguments of counsel, but a very careful going over of the entire pleadings in connection with these special matters. That I do not propose to do. I understand you to say, your bill is, if I may call it so, an omnibus bill, bringing in all the various issues that have arisen in this litigation, making all persons interested parties and that within the four corners of it all these questions could be worked out. Now if that is so, then if the case of Eustace v. Dickey is decided one way, it may be your bill ought to be dismissed; if it is decided another way it may be it ought not to be; that is, it would fall into that category naturally, without any question. But for reasons which I have stated and do not need to repeat, I cannot do it.

MR. KRAUTHOFF: I think it can be done if you will bear with me just a moment. After our bill was filed these pleas were interposed. We amended the bill and the parties who had interposed those pleas have not re-interposed those pleas and the bill as amended stands with the demurrers filed to it. But it is possible, as we see it, by disposing of the demurrers of the Trustees and of Mr. Dittemore and the Attorney General, and Miss Bartlett, to put the case in shape where you can report it to the Full Bench.

THE COURT: It would still be open, of course for the respondents who have filed pleas to argue that you could not get on with your bill anyway. In other words, your amended bill does not as matter of law overrule those pleas and dispose of them. It requires, as I have said before, the consideration of which I have spoken. But it would be possible for you in September, or after the 15th

of September, to have the case set down and taken up in the way I have suggested by the Judge who then presides going all over these pleadings and putting the case in such shape as to reserve it, not report it, but reserve it and be argued in the Full Court at the October sitting. I suppose, Mr. Clerk, there would be no difficulty in printing the record?

MR. CRONIN: No, your Honor.

THE COURT: So I can strike this case off the list. I have to do that; there is no other way, because I am perfectly well aware what it means. In the first place there would be the arguments. I should want to go over every one of the pleadings. I should want to give every one who wants to say anything an opportunity to be heard; then that means I must hear the case and satisfy myself fully upon all these questions that are raised, and that is no light task.

MR. KRAUTHOFF: The plea only presents one issue of fact.

THE COURT: I know you say so, but I have said enough about it to show I cannot do it. I ought not to reserve a case to the Full Court unless it is reserved properly upon plain, direct issues the decision of which will dispose of the case, and in order to do that I must do the preliminary work.

MR. KRAUTHOFF: With respect to the joinder of an additional plaintiff. Is it necessary to serve notice on counsel that I apply for that next Tuesday, or shall I do it now?

THE COURT: Have you filed the motion?

MR. KRAUTHOFF: I have the document here.

THE COURT: You may file it. I don't care to hear you at present. If any one opposes the joinder of a new party plaintiff to the bill I will hear them. That is a matter which is allowed substantially as of course. If they wish to demur further or plead further they may do so.

MR. KRAUTHOFF: The reason I suggested it come up next Tuesday, I thought counsel ought to have opportunity to oppose the joinder.

THE COURT: You misunderstood me. You might join the street as a party plaintiff, if you wanted to. What may transpire after you have joined them is another question. You have the right to come in here and present your case in any way you want to present it whoever the parties are.

THE COURT: Now, Mr. Attorney General, in your case what are the pleadings on behalf of the respondents.

MR. ALLEN: May it please the Court, there have been demurrers filed by the Trustees, a demurrer filed by the Trustees of the Publishing Society, a demurrer filed by the respondent Dittmore. The respondent Dittmore has also filed an answer to protect his rights. The other parties have all answered to the bill with the exception of three. In the case of Lewis J.

Harney, and Richard J. Davis, who entered their appearance by counsel, Mr. White, their counsel, has notified me that as to them the bill may be taken for confessed, and I have a motion prepared which moves that the bill be taken for confessed as against the defendants Lewis J. Harney and Richard J. Davis. In case of the other defendant, who is the only other defendant who has not answered, Charles J. Appleby, alias Lawrence A. Almon, no service has been obtained upon him. I have a motion that he, not having appeared in the case, the bill may be dismissed without prejudice, as against him.

THE COURT: Have you prepared decrees, the one taking the bill for confessed against the two defendants; and another dismissing the bill without prejudice without costs against the defendant upon whom no service has been made?

MR. ALLEN: Yes. These motions being allowed, the case then is before the court with two demurrers and answers by all the defendants.

THE COURT: Now are the demurrers similar in form?

MR. ALLEN: They are very similar in form, if your Honor please. They are lengthy in substance, but they raise substantially similar questions. The demurrer of the defendant Dittmore in substance alleges that the bill does not set out that The Mother Church is a public charitable trust; that if it does allege The Mother Church is a charitable trust, it discloses no ground for relief, in that it discloses no misappropriation or misapplication of funds, in that I have not asked that the Directors should be removed. Then it sets up various matters in the bill that are irrelevant and the findings that the bill does not support the prayers. The demurrer of the Trustees of the Publishing Society says in effect that the bill does not allege The Mother Church is a public charitable trust; that if the Mother Church is a public charitable trust the bill discloses no cause for relief; the issues are similar to those in Eustace v. Dickey, and asks the Court to prevent the Attorney General from intervening. It says the decision of the Master is res adjudicata. Then there are various matters alleged that are irrelevant; that the bill does not support the prayers. So that the issues in the demurrers are simple, in that they raise no questions which—

THE COURT: They raise this question: That the bill does not state a cause for equitable relief.

MR. ALLEN: Yes, your Honor.

THE COURT: That is the fundamental question.

MR. ALLEN: Now, may it please the Court, this bill, brought by the Attorney General without relators raises certain broad questions for the determination of the Court, in which the beneficiaries of the Church and the public generally are vitally concerned. There has never been any

question in my mind, or in the mind of my predecessor in office, that the bill should be before this Court in which those parties should be represented by the Attorney General, in which those questions which are vital to the charitable trust, its administration and its financial resources should be determined. When the case of Eustace v. Dickey was before this Court, I filed a petition to intervene on behalf of relators, those relators being First Members and members of the various churches acting through committees having taken action with respect to the vital questions in which the Church itself was interested. The Court, in considering that application, took the position that the issues in that case were narrow in their scope; that that was a controversy between the Directors upon the one side and the Trustees of the Publishing Society upon the other side, and that whatever was decided in that case could not affect the parties whom I represented. The Court, at that time, said: "It seems to me highly desirable that the Attorney General should take a stand in the matter as representing all the interests. He is the commander of the field; he does not ask relators or anybody else what he should do but he does it as representing the sovereign State." This bill in equity, this information, raises questions in which the Church and the Public are concerned, and that it is a vital thing appears from portions of the bill, two paragraphs which I would like to call to your Honor's attention.

THE COURT: I am not now, Mr. Attorney General, considering whether or not I should sustain or overrule the demurrer which has been interposed to your bill. I am only considering whether or not the case is such that I ought to reserve it on the bill and the demurrer to the Full Court before any further proceedings are taken before a single Justice, and you have gone far enough to convince me, if I needed any argument about it, knowing, of course—perhaps I have anticipated what the bill would be—that there is a fundamental question here that never has been settled in this Commonwealth at the very bottom of the case, that the Full Court should determine before any further steps are taken.

MR. ALLEN: I was going to address myself to that very question.

THE COURT: I do not care to hear you upon it unless I should be convinced by something to the contrary that I ought to hear you upon it.

MR. ALLEN: What occurred to me—perhaps I do not understand how far the Court would go. It is important, I believe to the beneficiaries, members of the Church, and the public, that the case should be heard upon the pleadings and should proceed in due course to a hearing upon the merits, for the reason that if, as the

Court otherwise might perhaps do, if the case should be reserved upon the demurrers for hearing by the Full Court at the occasion of the Court's coming in in the fall, if that should be done, and if it should then appear that the broad questions which have been raised in the case of *Eustace v. Dickey*, the questions which cannot be decided except in a proceeding in which the Attorney General representing the public is a party, and if the case should then go to a hearing upon the merits at some subsequent time, all the time is lost between this time and that. The paragraphs which I was going to call to your Honor's attention, in this demurrer, set out the fact that the income of the Church, the largest factor of that income is money that is received from publishing the literature of the Church, and these semi-annual payments are directed to be made to the Treasurer of the Church. No payment has been made since March 31, 1919. Furthermore, it sets out that this income is very seriously diminished by the fact that under the existing conditions subscriptions to the periodicals, advertisements which have formerly appeared, have been to a substantial and serious degree withdrawn so that the income of that trust of which the Church is a beneficiary is seriously affected. That being the case on behalf of the beneficiaries of that trust who are the financial sufferers and who are also losing because they are paying all the expenses of this litigation, or I might say these numerous litigations which are now involved, it is important that this case should reach an early hearing. All the parties in the various actions are before this Court in this bill with the exception of Mr. Krauthoff who has entered his bill as a member of the Church. With respect to him and his litigation the fundamental question which arises at the outset is whether or not a member of the Church as such has such a property interest in the subject matter that he is not represented by the Attorney General, so that the bill which has been brought and is now under consideration, is a bill brought on his behalf to the exclusion of his right to proceed as a member of the Church. If that question should be disposed of, and all parties demurring have raised that question and have taken the same position, then the questions which he raises, as it seems to me, in so far as they are metaphysical and related to questions which cannot be decided by his Court, are raised in this bill. The bill does not take sides between the Directors and the Trustees; it does not ask to have the Trustees removed, but in these questions which must be decided determines the decision of the other matters here, all in this proceeding in which all the parties are before the Court upon new evidence which is alleged and which very much affects the case as it will come before

the Full Court at the conclusion of the hearing upon the merits.

THE COURT: Who appears for the demurrer.

MR. ALLEN: Mr. Whipple on behalf of the Trustees of the Publishing Society and Mr. Thompson and others on behalf of the Dittimore and others.

THE COURT: Do you wish to be heard?

MR. WHIPPLE: I don't quite understand, I fear, what the Attorney General asks your Honor to do.

THE COURT: He asks me really, I take it, practically not to reserve the case on the fundamental question, here, whether the Commonwealth can maintain this bill, but to hear the arguments upon the bill and demurrers and then, if I overrule the demurrers, to send the case out to a master to be heard during the vacation.

MR. WHIPPLE: If that be the position which he takes, I venture to express the opinion that it might waste a great deal of time of the parties without accomplishing the direct results which I am sure the Court is desirous of having accomplished. From our own point of view the only thing that is really aimed at in the Attorney General's bill is to retry the issues which were tried, and as we think settled, in *Eustace v. Dickey*. Since that case was tried and since the report has come in there have been several attempts in some way to graft on to that case some evidence which Mrs. Hulin first claimed to have discovered that was omitted in *Eustace v. Dickey* with regard to some preliminary meetings of the Directors of the original church. In one form or another an attempt to introduce that into evidence has been made repeatedly before this Court, to get it, as I say, into the case of *Eustace v. Dickey*. In every case the proposition has been refused. In the Hulin case, first, they attempted to get what was practically a re-hearing upon it, and although it has been proposed so often, Governor Bates, who is the responsible counsel for the Directors who are parties to that suit, has steadily refused to move for a re-hearing on that ground and apparently has taken little or no stock in this so-called new evidence. Having failed in the Hulin petition, the parties invoked the Attorney General to come in and help them out. He attempted to intervene, apparently for that purpose, in *Eustace v. Dickey*. Having failed there, he now, in accordance with the suggestion of the Court very likely, brings this independent bill. If your Honor will read it, I think your Honor would be convinced that what I say is accurate, that it is an important, substantial part of the bill, that the only way in which it differs from *Eustace v. Dickey* is just that, that they are attempting to incorporate or introduce certain new evidence. Most of the bill states what are claimed to be legal

conclusions, or conclusions from the facts, conclusions which are directly opposed to the conclusions which Judge Dodge found to be the facts. Therefore, we feel justified in saying that the effect of the trial of this bill would be an attempt before the master to retry the issues which were tried and we think will be settled, must be settled in some form, by the opinion of the Supreme Judicial Court. If, therefore, we should be sent out this summer for a trial of these issues or a retrial of them, there would be accomplished that which the different Justices have refused so far, that is, a retrial of the issues that were heard and determined by Judge Dodge. We believe that as a matter of procedure the best thing to do to get the speediest result would be to have such questions of law as are presented by the Attorney General's bill go to the Full Court to be heard at the same time that *Eustace v. Dickey* is heard, if that can be done. Very likely if that can be done, if the Full Court upon a general survey of the whole case should decide that upon rendering a decision in *Eustace v. Dickey* that the Attorney General's bill should be heard on some other facts presented to them, it would be quite within the power of the Court to say so, and not very much time is lost in that way. Those who spent a large part of the summer last year in the trial of these issues, are not as anxious, I think, to repeat it as the Attorney General seems to be. However, it is not a matter where convenience of counsel should count very materially. If the situation is such as to require a sacrifice of their personal convenience, of course they would gladly make it. The Attorney General says his bill does not take sides. I don't see how any one reading the bill can reach that conclusion. To be sure he does not ask the removal of the Trustees, but his allegations are right in the face, right in the teeth of the findings of Judge Dodge throughout. The findings of Judge Dodge, which are favorable to the trustees, are directly opposite to the allegations of his bill. If the bill could be sustained upon the facts it would be a reversal of the decision of Judge Dodge and the bill cannot be read in any other way. If your Honor read it and compared it with the findings of fact in Judge Dodge's decision, we think your Honor would reach, and could reach no other conclusion.

MR. KRAUTHOFF: If your Honor please, I do not represent any party to the Attorney General's bill. I only desire to state now that if that suit is to proceed I shall present a formal application to enjoin its prosecution because it is brought after our suit was brought by a party defendant in our suit against other parties defendant and attempts to bring before the Court in piecemeal that which we have

brought before the Court in its entirety. I shall also ask to be made a party to the Attorney General's suit, because he claims to represent me and Mrs. Krauthoff, which we deny, as matter of law. We also claim that he does not begin to fully or even accurately state the facts upon which he claims to ask relief and in our favor. I merely state it now, because I am not a party to the suit and I do not want to be construed by my silence as acquiescing.

MR. THOMPSON: May I have a moment, if your Honor please. It seems to me, your Honor cannot decide the one question which I understand is now before the Court, whether to reserve this case now or to hear it now, without appreciating the single simple difference between the allegations of fact in the Attorney General's bill and the allegations of fact that have been found and fully tried on the pleadings and settled before Judge Dodge in *Eustace v. Dickey*. It wouldn't take more than five minutes to detect this wonderful, mysterious, novel thing upon which all these subsequent attempts to obtain a reversal of Judge Dodge's finding have been based, both by the Attorney General and those associated with him. It is said that there were, before Mrs. Eddy executed the trust deed of September 1, 1892, officials called Directors of the Church. Judge Dodge ruled that that deed was absolutely unambiguous, clear, explicit, not susceptible of being altered. He said it contained no ambiguities capable of construction, it didn't make any difference what those facts were. Further than that, this piece of evidence was, as has been shown since, in the possession of Governor Bates before the master's report was filed. There is an affidavit on file here by Mrs. Longyear to the effect that she herself paid the large salary of the man who discovered these things, this very document, this diary entry which was sent into Governor Bates' office. The demurrer of Mr. Dittmore, and I understand Mr. Whipple's also, raises many other questions, and the precise question whether that piece of evidence makes any difference, whether it could alter any of those conclusions. I think the demurrer is well taken and I am emboldened to make that suggestion because it has been so ruled by Judge Dodge in dealing with perfectly explicit written documents that cannot be changed or interpreted. I think if your Honor will look at the demurrer and look at the allegations of fact which have been so much paraded in Court, your Honor will see the only course is to reserve this case and now send it to a master on the facts. I urge your Honor strongly to consider that my client was, as Judge Dodge has found—I am not making my own assertion, I am sustained by the testimony—my client has been unfairly discharged; he has

waited for over a year for restoration to his rights; the charges made against him were unfounded when they were made, and he is certainly entitled to reasonable speed in restoration of his rights. The same happens to be true of Mr. Rowlands. Here are two men found to be grossly and unjustly treated. They have been hampered for months finally culminating in proceedings brought by the Attorney General instigated by the same people for the purpose of preventing these rights from being realized by the parties to whom they belong. I earnestly urge your Honor not to send the case to a master; not to delay further. I may say, I assume the Attorney General asks not only what your Honor suggested, but one other matter, which is included in his bill by a special prayer, namely, that your Honor enjoin the further prosecution of these suits. If the demurrer is examined at all it will be seen that it has merits on that point. As to the new evidence. As Mr. Whipple states the bill is nothing but a repudiation of what has been determined by Judge Dodge. It may be said furthermore that the Attorney General in all the time that case was going on knew, and he himself says his predecessor in office was informed of it, that the case was being tried, but he took not one step to come in. He was invited to come in and become a party taking the case as he found it, but he declined to do so on the ground that this evidence existed. I am not in a position to deny and should not dream of contesting any personal statement of fact he might make, but I must say I cannot help agreeing with Mr. Whipple that this looks very much like a partisan proceeding and I ask your Honor not to grant it.

THE COURT: Mr. Thompson, I understand you to say that upon the bill and demurrers these various questions which you have addressed yourself to are presented and can be decided?

MR. THOMPSON: Yes.

THE COURT: I have more especially in mind the effect, whatever it may be if it has any, of the master's report in *Eustace v. Dickey*. I understand it has been reserved to the Full Bench.

MR. THOMPSON: It has.

THE COURT: That answers all the inquiry I desire to make. Now, Mr. Attorney General, is there anything further you wish to say?

MR. ALLEN: May it please the Court, I am not going to attempt to reply to what has been said in regard to the new facts that are alleged in this bill except in so far as to say that in the opinion that I have previously stated and in the opinion of all those who have been interested on behalf of the Church, the facts are new and are material, and neither of the parties can be prejudiced by having the matter before the Court. The

question is, whether or not there was a meeting in August at which Directors of the Church were elected prior to the deed of September 1, 1892, and that is an issue which has not been, by their own admission, in the case, the controversy upon which they say to your Honor that these questions of vital interest to the Church, its government, its discipline are to be decided have been raised; in a controversy between two groups of Trustees, each claiming one way and the other upon the question of the right of removal of a director and of a trustee. The Church, which is located in Boston, is within the jurisdiction of this Court and has never been heard upon these questions, and the questions are questions in which the whole future of the Church may be involved and it would be a great misfortune if, as is contended, these questions should be presented without the Court having full information in a proceeding in which the Church and its beneficiaries and those who are concerned more than these Trustees and Directors who are only creatures of the trust for the time being, can be concerned. I haven't taken sides in any regard except in so far as the financial interest and the income of the property of the trust is vitally concerned, by those questions which determine what that interest is and how it shall be protected, and to that extent I have taken sides in asking the Court to determine upon these alleged facts whether or not the Church and its governing body does not control the literature of the Church which is one of the questions most vital to the life and the future of this religious body.

THE COURT: I appreciate very fully the argument of the Attorney General. Of course the case has two sides to it. The practical delay in trying the merits—by merits I mean the issue of fact involved in framing the bill, may tend possibly more or less to vexation; possibly it may tend to some dissipation of funds which, if the parties who are finally found, if such finding is made, to have illegally appropriated them, they are not financially responsible for. But as I said a moment ago, when this matter came up first, it would be extremely unfortunate to put the parties to the expense of litigation which must follow upon the reference to a master, counsel fees, costs, etc., if it finally turned out the bill could not be maintained, or if it finally turned out that if the bill can be maintained it must be upon a very narrow ground indeed. I have no final opinion on that. I haven't heard the arguments of counsel, but as I get the Attorney General, he says that it is a public charity and being a public charity the State has an interest that the funds shall not be squandered but shall be used for the purpose for which the founder intended. Fundamentally that is sound.

But that that very question is involved in the four corners of Eustace v. Dickey, must be of course, between these contending factions. I am simply stating what has been stated no doubt by other Justices here in one way or another. The functions of each have to be construed, perhaps. Now within that field the first question is whether the bill of the Attorney General can be maintained because within the scope of that litigation, with a view to the protection of the rights of everybody interested in it, their rights are fully protected by the first bill, by a decree of the Court which may follow upon that bill, prima facie, as it may seem. The further and deeper question involved in the bill of the Attorney General is whether or not under our Constitution there is any interest in the Commonwealth whatever that any religious organization or society, whatever its name may be is wholly immaterial, is to be protected in the advancement of its particular propaganda by a fund which has been provided for it? I express no opinion about it, of course, but I simply state the question: Has the Commonwealth any interest in any one form of religious belief more than any other form of religious belief? Does it throw its protection over any one form of belief to preserve that fund for the propagation of that form of belief independently of any action on the part of those for whose sole benefit the fund was created and is to be administered? Now these questions, as I have said, are questions of vital importance. Then comes the question resented by Mr. Whipple and by Mr. Thompson. I have not had any question and I do not know that these two cases ought to be heard, argued together. The only doubt I have had was removed—and you said the same thing, Mr. Attorney General,—and Mr. Thompson and Mr. Whipple alluded to—that the record in this case will permit the parties to range into the question as to the effect of Judge Lodge's report in Eustace v. Dickey and the conclusiveness of whatever decree may be ordered by the Court in that case, if it orders one. Now the record is clear. If there is any doubt about it now is the time for you to state it. So after your two interlocutory decrees are entered, the case stands on the bill and demurrer.

There is no doubt about that, Mr. Allen?

MR. ALLEN: No, sir.

THE COURT: Then I shall reserve it upon the bill and demurrers for the determination of the Full Court. Now the other case is pending before the Full Court. If it were now pending here I should enter an order consolidating these two cases and have them argued together. But that will be open to you, counsel on both sides, before the Full Court to make the suggestion that they should be argued together. I suppose none of you would care to argue them separately. They should be argued together.

MR. WHIPPLE: We take that same view of it.

THE COURT: Now, Mr. Krauthoff, I don't know that it is necessary to say anything to you about it. You are not a party I understand, to it in any way?

MR. KRAUTHOFF: Not a party of record.

THE COURT: Are you a party to the bill in any way?

MR. KRAUTHOFF: Not of record.

THE COURT: You cannot be a party to the bill, can you, unless you are a party of record?

MR. KRAUTHOFF: I suppose not.

THE COURT: Of course you are not concluded at all by any order made now or any order the Court may make, so far as you have any individual rights that are not within the scope of this bill.

MR. KRAUTHOFF: I hesitate to express any opinion as to the matter of pleas, but I took up with Mr. Justice DeCourcy the question of reserving the case on bill and demurrer and he said—

THE COURT: I am familiar with the statute and have been for eighteen years. I have no more doubt about my power to reserve this case upon the bill and demurrers even if counsel do not agree to it than I have of my power to adjourn this session.

MR. KRAUTHOFF: We have filed an application to join another party plaintiff. Shall I ask that they plead within a certain time?

THE COURT: What is your application?

MR. KRAUTHOFF: To join another member of the Mother Church as party plaintiff.

THE COURT: Has there been a

previous motion of that sort in this case.

MR. KRAUTHOFF: Not in the Krauthoff case, it was brought by two members of the Mother Church; this is a third member.

THE COURT: You want to join another party plaintiff. I told you I would allow the motion, didn't I?

MR. KRAUTHOFF: I was asking whether it would be necessary to have an order to plead to the new party within a certain time.

THE COURT: Why no, unless—no. The applicant becomes a party plaintiff under the condition of the pleadings as they now stand. There are no allegations which he or she desires to add to the bill, so there is nothing further for the defendants to do but plead to or answer. He or she takes the record as she finds it.

MR. KRAUTHOFF: There might be an issue as to whether the new party was a member of the Church.

THE COURT: That can be determined later, whether she has any standing to maintain the bill.

MR. KRAUTHOFF: In the suit of Krauthoff v. Attorney General, the pleas we referred to present the issue of fact as to what extent I was in control of Eustace v. Dickey as counsel. Can we have that issue sent out to the master so as to have that evidence—

THE COURT: No. I am going to let your case stand until these two cases are decided and all the rest of the litigation will stand until these two cases are decided.

MR. KRAUTHOFF: Then I desire to present an application to intervene in the Attorney General's case.

THE COURT: You can do that and file it this afternoon. I will hear you tomorrow morning at half after nine o'clock. I will say very frankly to you now you will have to present an extraordinarily strong case before I allow any such motion; and I shall limit you under the rule to one hour in argument.

MR. KRAUTHOFF: It will be a strong argument. Will counsel take notice that the motion will be heard at that time?

THE COURT: Certainly.

Publisher's Note—The above is a verbatim report, with no corrections made by us in the stenographic court report supplied to us.

Monday, Oct. 4, 1920

BOSTON, Massachusetts—Mr. Justice Pierce, of the Supreme Judicial Court, Oct. 4, 1920, heard the motion of Mr. Krauthoff, filed in the case of Krauthoff vs. Attorney-General, in which he sought a restraining order seeking, among other things, a modification of the injunction in the case of Eustace vs. Dickey.

Mr. Krauthoff contended that his motion should be allowed to the extent of requiring the Trustees to pay over sums of money which he claimed were in their possession and should be paid over to the Treasurer of The Mother Church, and to require the Directors to elect editors as requested by the Trustees at the time of Mr. McKenzie's resignation, and to compel the Directors to announce that the periodicals were the organs of The Mother Church, and to require, if possible, but if not, to request Christian Scientists to renew their subscriptions to the periodicals.

Mr. Whipple, for the Trustees, stated that there was no such unrest in the

Field as Mr. Krauthoff's remarks had indicated; that the report of expert accountants showed nothing was due to the Treasurer of The Mother Church, but on the contrary, due to a failure in prior years to set apart a portion of the gross income to meet the cost of filling subscriptions which had been paid for but not completely fulfilled at the end of the accounting period, the Trustees had overpaid the Treasurer; and that while Mr. Krauthoff's intentions were laudable, nevertheless, his suggestions as to the method of accomplishment were impracticable.

Mr. Dane, for the Directors, stated that no partial modification of the injunction in the case of Eustace vs. Dickey could be of any avail; that there could be no cooperation between the Directors and the Trustees unless the injunction were dissolved and the editing and control of the periodicals were placed entirely in the hands of the Directors.

Mr. Thompson, counsel for Dittmore, urged the Court not to take any action for the dissolution of the injunction which he stated might seriously affect his client's position; he charged the Directors with the utmost inconsistency in now contending that there could be no cooperation or compromise, as this had been Mr. Dittmore's original contention, and as was found by the Master, for this very reason the Directors had undertaken to dismiss Mr. Dittmore. Mr. Thompson also stated that it would be a great mistake to place the editing of the periodicals in the hands of men who had been found to have acted in bad faith in attempting to dismiss Mr. Rowlands and Mr. Dittmore.

At the conclusion of the hearing, Mr. Justice Pierce denied the motion, stating that it involved the determination of both questions of fact and questions of law which were pending before the Full Bench in the case of Eustace vs. Dickey.

CHRISTIAN SCIENCE CASE MOTIONS DENIED

BOSTON, Massachusetts—Justice Pierce of the Supreme Judicial Court for the Commonwealth of Massachusetts Oct. 20, 1920 denied motions made by Edwin A. Krauthoff to intervene in the action of Eustace et al. vs. Dickey et al. The motions sought to present certain matters heard by the Master but not included in the exceptions taken by counsel for the directors, and to amend the printed record now before the full court.

MOTION TO AMEND RECORD IS DENIED

BOSTON, Massachusetts—A motion to amend the record in the bill of exception in the matter of the Hulin petition was presented to the full bench of the Supreme Judicial Court Oct. 21, 1920 and argued by Edwin A. Krauthoff, Esq.

The motion was denied by the court without calling upon other counsel.

Attorney-General Allen then stated informally a suggestion that he would like to file a motion in the case of Eustace v. Dickey, raising the ques-

tion of the jurisdiction of the court over that case.

The court declined to consider his suggestion and stated that if the Attorney-General desired to file such a motion as he indicated he could bring up the question both as to his right to file such a motion and to appear in Eustace v. Dickey, at the date already set for argument, the 29th of November. No other counsel were called on in connection with the Attorney-General's suggestion.

FINAL ARGUMENTS IN SCIENCE CASES

BOSTON, Massachusetts—A memorandum of the time assigned by the Full Bench of the Supreme Judicial Court of Massachusetts for the hearing of the arguments in the Christian Science cases and the time allowed to counsel was handed to the Clerk of the Supreme Court on November 13, 1920.

A copy of the memorandum reads as follows:

TIME ASSIGNED			
Monday, Nov. 29.....	9:30 to 1	3hrs. 30m.	
" " ".....	2 to 4	2hrs.	
Tuesday, Nov. 30.....	9:30 to 1	3hrs. 30m.	
" " ".....	2 to 3	1hr.	
Total.....		10hrs.	

No separate arguments for the several cases.

Maximum of Time Allowed for Argument		Representing
Nov. 29	Mr. Bates and Associates	Directors
2hrs.—	9:30 to 11:30 a.m.	
Nov. 29	Mr. Thompson	Mr. Dittmore
1hr.—	11:30 to 12:30 a.m.	
Nov. 29	Mr. Nash	Mrs. Hulin
1hr.—	12:30 to 1 p.m.	
	2 to 2:30 p.m.	
Nov. 29 and 30	Mr. Whipple and Associates.....	Trustees
2hrs.—	2:30 to 4 p.m. (Nov. 29)	
	9:30 to 10 a.m. (Nov. 30)	
Nov. 30	Mr. Krauthoff.....	Himself
2hrs.—	10 to 12 a.m.	
Nov. 30	Attorney-General...Himself	
2hrs.—	12 to 1 p.m.	
	2 to 3 p.m.	

The Attorney-General may not argue orally his motion in No. 1395, Eustace v. Dickey, but may submit brief. Other parties to that case may file briefs upon that motion of the Attorney-General.

KRAUTHOFF MOTIONS DENIED BY COURT

BOSTON, Massachusetts—In the Supreme Judicial Court of the Commonwealth of Massachusetts, Justice Jenney, on December 24, 1920, denied the petition of Mr. and Mrs. E. A. Krauthoff, in their suit against the Attorney-General et al., for an injunction restraining the further publication and distribution of a special edition of a Boston paper, and also denied the motion to make it a party defendant in the Krauthoff suit.

INJUNCTION SOUGHT BY MR. DITTEMORE

BOSTON, Massachusetts, February 24, 1921. In the Supreme Judicial Court of Massachusetts a bill in equity was filed for John V. Dittimore, by his counsel William G. Thompson, in which the court is asked to enjoin the directors of The Mother Church, who are also Trustees Under the Will of Mrs. Eddy, from requiring the trustees of The Christian Science Publishing Society to substitute the name of Annie M. Knott for that of John V. Dittimore in the list of directors contained in the Eighty-ninth Edition of the Manual.

The bill is supplemental to the suit of John V. Dittimore vs. The Christian Science Board of Directors. It alleges that the defendants, Dickey, Neal, Merritt and Rathvon, together with Josiah E. Fernald and the plaintiff, are trustees under the residuary clause of Mrs. Eddy's will, and that, acting as trustees, they made a contract with the trustees of The Christian Science Publishing Society, on October 19, 1917, for the publication of Mrs. Eddy's works, among others The Mother Church Manual; that the defendants, Dickey, Neal, Merritt and Rathvon, pretending to be acting in their capacity as Trustees Under the Will, have demanded that the trustees of The Christian Science Publishing Society publish a new edition or new copies of the Manual in which the name of Dittimore is omitted and that of Mrs. Knott substituted; but in reality, in their capacity as defendants in the Dittimore suit, they are seeking to injure the influence, reputation and standing of the plaintiff, and to prevent him from obtaining the full advantage of a favorable decision of the Massachusetts Supreme Court.

The bill joins the trustees of the Publishing Society as parties defendant, and alleges that the trustees of the Publishing Society asked the defendants, who were acting as Trustees Under the Will, to await the decision of the Supreme Court, but that the Trustees Under the Will refused to wait and demanded that the requested change be made. The bill further states that the trustees of the Publishing Society, being desirous of avoiding litigation with the Trustees Under the Will, are about to comply with this demand. The court is, therefore, asked also to enjoin the trustees of the Publishing Society from complying with this demand of the Trustees Under the Will.

INJUNCTION SOUGHT BY MR. KRAUTHOFF

BOSTON, Massachusetts—A petition was filed on March 29, 1921, in the Supreme Judicial Court of Massachusetts by Edwin A. Krauthoff in his suit against the Attorney-General, seeking to enjoin the insertion of the words "Active Officers" and the "transposing the words 'Christian Science Board of Directors'" on page 21 of the Manual of The Mother Church. This petition was set down for hearing on Tuesday, April 5, by order of Judge Crosby.

John V. Dittimore's supplemental bill seeking to restrain the elimination of his name as one of the Board of Directors on this page of the Manual is also returnable on April 5.

STATUS QUO IS PRESERVED

Trustees of Mrs. Eddy's Will Directed Not to Take Name of Mr. Dittimore From Manual

BOSTON, Massachusetts—A hearing was had April 5, 1921 before Mr. Justice Braley in the Supreme Judicial Court upon the application of John V. Dittimore for a restraining order against the removal of his name from page 21 of the Manual.

William G. Thompson addressed the court in behalf of the plaintiff Dittimore. Charles F. Choate Jr., argued for the Trustees under Mrs. Eddy's Will. Ex-Gov. John L. Bates also addressed the court in behalf of the Directors. Sherman L. Whipple, counsel for The Christian Science Publishing Society, stated that his clients did not care to be heard, but wished to have the direction of the court.

Judge Braley stated that he felt that the status quo should be preserved while the matters in dispute were pending before the Supreme Judicial Court; that while Mrs. Knott might be acting as a Director de facto, the list of names appearing in the Manual represented the de jure Directors and that question could not be determined until the decision of the Full Court. He further stated that if there were any issues of fact raised by the pleadings he should refer them to the Honorable Frederic Dodge, as Master, unless Mr. Choate could advance very strong reasons to the contrary.

He thereupon requested Mr. Choate to stipulate in behalf of his clients that they would not press the removal of Mr. Dittimore's name in future issues of the Manual until further order of the court, and he incorporated this stipulation in an interlocutory decree. Sherman L. Whipple for the Trustees of the Publishing So-

ciety joined in the stipulation. This stipulation reads as follows:

"This case came on to be heard upon the return of the order to show cause and thereupon in open Court the defendants, Dickey, Neal, Merritt, Rathvon, and Fernald, Trustees under the Will of Mary Baker Eddy by their attorney, Charles F. Choate Jr., and the defendants Eustace, Ogden and Rowlands, Trustees of The Christian Science Publishing Society, by their attorney, Sherman L. Whipple, entering into the following stipulation, that until the further order of the Court they will not print or publish or request or demand the printing or publishing of any new editions or issues of the Church Manual not containing the name of the plaintiff, John V. Dittimore, as an officer of said Church and a member of the Christian Science Board of Directors, or containing the name of Annie M. Knott as an officer of said Church and a member of the Christian Science Board of Directors, it is ordered that said stipulation is accepted and no restraining order or preliminary injunction shall now be issued."

The hearing on the appointment of a Master was set down for Tuesday, April 12th. The court stenographer being unable to furnish a transcript of the proceedings before the court for publication today, the verbatim report of yesterday's proceedings in the case of John V. Dittimore vs. Adam H. Dickey et als. will be published in The Christian Science Monitor tomorrow, or as soon thereafter as the transcript can be furnished for publication.

Later Mr. Krauthoff, addressing the Court on his petition to enjoin certain other changes on the same page of the Manual, stated that the Trustees under the Will proposed to insert the words "Active Officers" preceding the names of the Christian Science Board of Directors. This matter was finally disposed of by the assurance of counsel for the Trustees of The Christian Science Publishing Society that no change involving questions in dispute before the Supreme Court would be made pending a decision unless by agreement of all parties or upon express direction from the court.

DETAILED REPORT OF DITTEMORE HEARING

Complete Record of Hearing for Restraining Order to Prevent Removal of Mr. Dittimore's Name From Church Manual

BOSTON, Massachusetts — The verbatim report of Tuesday's proceedings in the case of John V. Dittimore vs. Adam H. Dickey et als. is published

by The Christian Science Monitor today. Only an abstract of this report was available for publication in Wednesday morning's issue. The complete record reads as follows:

COMMONWEALTH OF
MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. In Equity.

No. 30788.

DITTEMORE v. DICKEY ET AL.

Appearances:

William G. Thompson, for the plaintiff.

Charles F. Choate, Jr., Esq., for the trustees under the will of Mary Baker Eddy.

Bates, Nay, Abbott & Dane, for the Directors.

Sherman L. Whipple, Esq., and Lothrop Withington, Esq., for the Trustees of the Christian Science Publishing Society.

BEFORE MR. JUSTICE BRALEY,

Boston, April 5, 1921.

THE COURT: What is this case?

MR. THOMPSON: The case is brought to prevent a change in the status of the plaintiff by the action of the defendants while waiting for the decision of the full court.

THE COURT: You ask that the status quo be preserved until the final opinion comes down from the full bench; is that all?

MR. THOMPSON: Except that the threatened change is disastrous to my client.

MR. CHOATE: I appear for the defendants, if your Honor please, for the trustees, or certain of them who are trustees under the will of Mrs. Eddy. That number includes the five directors and Mr. Fernald who was not a director or a party to the previous litigation. I had desired to ask the accommodation of the court and ask to have the case stand over until next Tuesday, if possible.

MR. THOMPSON: I don't like to do that.

THE COURT: Suppose in the meantime an agreement is made that nothing shall be done?

MR. THOMPSON: We have had one experience of that kind in the previous litigation, not with the same counsel, but a stipulation to do that very thing at the time we asked for a temporary injunction, and at the suggestion of your Honor we took a stipulation and as a result we have gotten ourselves into all sorts of trouble. I do not feel I can do justice to Mr. Dittimore without asking to have a restraining order pending any delay whatever. The situation is a serious one and I hope your Honor will—

THE COURT: Are you and Mr. Choate in dispute about the facts alleged in your petition or bill?

MR. THOMPSON: In my judgment

his answer does not put in dispute any fact. The answer of Mr. Whipple admits all the allegations in my bill.

THE COURT: Are you at issue on any allegation made in the plaintiff Dittimore's bill?

MR. CHOATE: My answer alleges a good many things I am not sure Mr. Thompson will agree to; we do put in issue the motives alleged in the bill.

MR. THOMPSON: I would like to call your Honor's attention to the circumstances. Mr. Whipple's clients, who are the three persons in charge of publishing this Manual with my client's name left out and Mrs. Knott's name put in, admit all the allegations of my bill. Mr. Choate makes the same excuse for leaving the name out, he says his duty as a trustee under Mrs. Eddy's will requires him to do it, but he—

THE COURT: What question is there here? I understand it is this—I am using my previous information about it—the board of management proposes to send out a list of officers which omits Mr. Dittimore's name and substitutes the name of Mrs. Knott. You say until such time as the questions at issue have been determined by the full bench the situation ought to be preserved and that it should not be done. Is there anything more?

MR. THOMPSON: Nothing except the nature of Mr. Choate's reasons for doing it.

THE COURT: Why shouldn't you do that—preserve everything just as it is, refrain from publication in the Manual—if that be the right name for it—refrain from making any change in the Manual until the opinion comes down in the pending cases?

MR. CHOATE: The Manual is published, it comes out from time to time. In any new edition, each year, they publish a list of the names of the officers, and they endeavor, in publishing this list, to comply with the records of the church. The records of the church show Mrs. Knott is a director, and Mr. Dittimore claims he was unlawfully removed and that his name should appear. We are in this situation, we cannot publish both lists; we are obliged to publish some names as directors, according to the regulations of the church. We have been pursuing what we believe to be the sound method indicated by Judge Pierce. He said on May 4th, 1920, after Judge Dodge's report when this matter was in very much the same situation as it now is, except the cases had not been argued in the Supreme Judicial Court: "I thought the other day, subject to what information I could get at the moment that it was rather elementary that where one of a Board had been removed in apparent, or rather with apparent authority, and a new person appointed in the removed one's place, that the new Board was at least a de facto board and that the member who had been ousted only had rights of remedy in this court or some other court to be restored to the position

from which he claims he was moved out. I still think that is the situation. That is ordinarily the case, in some respects like a public officer being removed, for instance a policeman or the city Treasurer, and the new person appointed in his place by the votes of those who have a right to appoint, providing they are acting legally, the person who is in office has the right to perform all the functions of that office until the Court shall say that the person who has been removed is improperly or illegally removed. That seems to be the situation. Therefore unless there is something more to be said on that, I do not think either the Attorney General or Mr. Dittimore ought to be made parties. Having disclosed my mind, I will hear what you have to say about it." I still think that is the situation. Now Mrs. Knott is a de facto director; Mr. Dittimore is claiming that he is lawfully entitled to her place; that matter is in litigation. If we could indefinitely hold up the publication of the Manual, or if it was a single publication that went for all time, that would raise quite a different question; but it is a book that comes out from time to time and will come out again probably inside of a year, maybe six months, and if a change had occurred in Mr. Dittimore's status then, of course, it would be corrected. But one difficulty about the interval of delay is the way the Dittimore case was left in the records of the Supreme Court; it is unfinished, the parties claiming they had a right to put in more evidence, and it is quite uncertain whether any decision of the Supreme Court would finally dispose of Mr. Dittimore's case. Of course I do not know how it will be dealt with, but it is possible, and quite a large possibility, that the Dittimore case cannot be finally disposed of by the decision that we are all waiting for. As I said to Mr. Thompson, the difficulty about going on to-day is, I am trying a case where we are under an order from the Superior Court to go on from day to day. They obligingly allowed me to be absent on Thursday to argue a case before the Interstate Commerce Commission. I can get a suspension so as to be free the first part of next week. This case is only down to-day on the question of an injunction; it is not down on the bill and answer or the merits. My suggestion is we might have it in such shape and the record in shape so we could have it heard on the bill and answer next Tuesday, or if it couldn't be heard on bill and answer your Honor could decide how it should be dealt with.

THE COURT: Mr. Whipple, do you represent any one?

MR. WHIPPLE: Not an interested party; we are subject to the direction of the court.

MR. CHOATE: I am sorry that my stipulation has so little current value, but I am willing to agree that the matter shall remain exactly as it is

until the court decides how it shall be dealt with.

THE COURT: And put it in a decree—put your stipulation in the form of an interlocutory decree?

MR. CHOATE: I shouldn't want to have it read as an injunction.

THE COURT: The decree would read, the parties having stipulated in open court—and put the stipulation in as you agree to it—a temporary injunction is not issued.

MR. CHOATE: Entirely satisfactory to me.

THE COURT: Mr. Bates, have you something to say? I will hear you later, Mr. Thompson.

MR. BATES: We represent, as your Honor knows, the Board of Directors; that is, not exactly the same Board as the Trustees under the will, who are represented by Mr. Choate. There are two trustees under the will who are not on the Board of Directors, there is one person de facto at least and one we think de jure member of the Board of Directors, Mrs. Knott, who is not one of the trustees under the will. We believe that the publishing of Mrs. Knott's name as a Director in the Manual does not change the conditions or status. I only wish to add to the facts that Mr. Choate has called your Honor's attention to, the fact that Mr. Dittmore who seeks to keep his name advertised as a member of the Board of Directors pending the decision of the court in the case of Dittmore v. Dickey, seeks merely to be advertised as something which we would like the chance to show your Honor he is not. He has not since March 17, 1919, attempted in any way to act as a Director of this church; over two years has elapsed and he has not crossed the threshold of the Directors' room or desired or attempted to attend a meeting or to discharge any of the functions of a director. At the time that he was removed, as shown by the church records and admitted by his bill, Mrs. Knott was elected a Director and she assumed her duties as a director at once and has attended all the meetings, which have been almost daily, since that time, for a period, as I have said, for over two years; and she has been recognized by the court as de facto a director of this Board, at least by Judge Pierce in his statements, some of which have been quoted to your Honor this morning. She has been active. We ask now not to change the Manual, but that the Manual that goes out with the list of officers shall have the list of officers in accordance with the records of the church, in accordance with the facts, until such time as this court shall determine the rights of the parties. We want to say, in addition to that, that Mr. Dittmore himself from the beginning has recognized that as the situation. His bill sets forth the fact that he hasn't acted as a director nor attempted to act as a director; that Mrs. Knott has been acting as a direc-

tor and is acting as a director still. Now the only decree that he asked for as an interlocutory decree and which was the result of the stipulation, was this: He asked simply that until the suit was settled and his rights determined, that he might be permitted to occupy the rooms that he had been occupying and to retain his papers. He never came into this court when he was asking for that stipulation or for an injunction that should prevent our interfering with his occupying these rooms or interfering with his papers and taking possession of them—he never asked that he might be restored temporarily to his rights as a director, or not be prevented from exercising those rights. For over two years this has been the situation. We are not seeking to change it; we are seeking to have the Manual represent the actual facts and when the court shall decide this question if by any possibility it should be decided contrary to the Manual, why then it will be changed to represent the situation as it is. In addition to that Mr. Dittmore has made the statement in open court in a letter read by his counsel, I think it was before your Honor, to the effect that he recognized, or acquiesced in his removal, that he did not propose in any way to attempt to break the laws as laid down by Mrs. Eddy in the Manual and that therefore he should accept that situation. He asked your Honor to release him as a defendant in the other suit on the ground that he was out of the Board of Directors and that has been his consistent attitude from that time to this. Why should he seek to enjoin the Board of Directors or the trustees who have a right to insist on what the publishing society should put into this Manual as a list of officers? Why should he seek to enjoin them from publishing the facts in accordance with the actual records and the facts he has acquiesced in for over two years?

THE COURT: I don't care to hear from you further. I understand, Mr. Bates, you represent the governing body who will issue the new Manual?

MR. BATES: No, your Honor, Mr. Choate represents the trustees under the will who own the copyright of the Manual and who have control with the Publishing Society—

THE COURT: You have nothing to do with it?

MR. BATES: Only this, we are accused in this supplemental bill—

THE COURT: You have nothing to do with the publication, to order it or withhold it?

MR. BATES: We have no control over the copyright directly.

THE COURT: Any one else who wants to be heard? Now, Mr. Thompson:

MR. THOMPSON: I think your Honor will permit me, for the purpose of common justice, to correct one or two misstatements of fact. The reason why Mr. Dittmore hasn't been

near the Directors' meetings was because it was understood at the time of the stipulation, at the time the stipulation was made, that he would not do so. He did ask for an injunction restoring his rights at that time and your Honor thought, and I acquiesced in it, that it was giving more than would keep the status quo and your Honor advised a stipulation that they should not eject him from his rooms or seize his books and papers. Mr. Dittmore did, originally, make a strong effort to conciliate his opponents; he did say he would rather not oppose this action, not because he didn't think it was wrong, because it was and is so asserted by him; but business required him not to engage in litigation. Later he was threatened with ejection from his rooms, and his books and papers threatened with seizure and he brought his bill, and said he thought it was common justice not to tolerate these proceedings any further. Your Honor heard Mr. Bates make these same statements two years ago, about this letter, and your Honor made this remark: "Mr. Dittmore has a right to change his mind." He has changed his mind and it has remained changed ever since. In regard to what Mr. Choate suggests, I call this fact to your Honor's attention—one which is not attacked by anybody and cannot be successfully controverted: The only persons who have any right to publish this Manual are Mr. Whipple's clients. They produce the editions as they are needed. They were threatening to get out another edition at the request of Mr. Choate's clients, who are trustees under Mrs. Eddy's will, all but one of whom are Directors of the Church. There is a letter in existence addressed to themselves in their capacity as trustees under the will requesting that this very change be made, and therefore we are suing the very people who are acting in a double capacity, endeavoring in one capacity to do what they cannot do in another, who for one entire year, from June, 1919, to June, 1920, did not make any request to have this Manual reprinted. Reprints of this Manual were issued under a plan shown to Mr. Whipple's clients and Mr. Choate's clients, and approved by them, showing Mr. Dittmore's name as a Director. This is an afterthought; it is something that came up as a result of the heat of litigation in the main case, and of an attempt to discredit Mr. Dittmore in the field. I do not believe in these circumstances, inasmuch as this thing constitutes a plain violation of that stipulation, and is plainly to take advantage of us for not insisting further than we did to have the sweeping injunction that we first asked for, I submit that it is not fair to ask us to take any more stipulations. I ask that this matter be decided at once,

or set down on the bill and answer. There is no issue of fact—

THE COURT: Replication is no longer necessary.

MR. THOMPSON: If it were I shouldn't file one in this case. We feel this injunction ought to issue. I think in view of the correspondence, which I am prepared to show here, repeated requests made to these gentlemen to await the decision of the Full Court, their refusals to do it and their putting pressure on Mr. Whipple's clients, trying to put them in a false attitude, I think we have tolerated these proceedings long enough and we ought to be entitled to the quiet adjudication of our rights in this Court. I think this is contempt both of this court and the Appellate Court—the striking out of this name—besides that, if your Honor please, it wouldn't make any difference whether the decision of the full bench in *Eustace v. Dickey* required further litigation in *Dittemore v. Dickey* or not; if there were no other case, this is a case where the status of Mr. Dittemore is brought before a court of equity and it makes no difference whether it is brought before it in another case or not, this is an attempt to take away from a Court of Equity its right to adjudicate matters in issue. I think we ought to have the milder remedy of an injunction or might be entitled to the stronger one, attachment for contempt.

THE COURT: I wish to ask you one more question, if you still are of opinion that there is any issue of fact to be determined between you.

MR. CHOATE: Yes, I think there is.

THE COURT: Very well, I will hear you

MR. CHOATE: I have been rather free from this atmosphere of crimination and recrimination which seems to pervade this case. The issue involved in this bill is really a very simple one,—whether there is any impropriety in people who are charged with responsibility of publishing this Manual from time to time, publishing it and putting in the names of the officers as they appear on the records of their Church. Now while they are the same parties, or some of them are the same parties, who are involved in the main litigation, this question hasn't anything to do with that action, and is not proposed to injure Mr. Dittemore, or prejudice his case or to advertise him as not a member of the Board or anything of the kind; it simply is a plain duty we have to publish the Manual and put in it a list of the Directors. If we put in Mr. Dittemore's name, Mrs. Knott will make the same complaint against us that he does. It is simply a practical question. As far as the matter before your Honor to-day is concerned, I suppose it is nothing except the question whether the accommodation I request may be granted and upon what terms.

THE COURT: If there is any question of fact between the parties I shall send the case to a Master to determine those issues and make a report to the Court and then when the report comes in, I will make a further order and you can take the matter up to the full court by appeal if you desire to do so. But pending that hearing this petitioner, or plaintiff—I understand it is an original bill from looking at it—is entitled to a certain measure of protection or relief. Granting that by the rules of the church or by the terms of the trust deed, those having authority to do so are required to print periodically the Manual, giving the names of all the officers, it is not proposed to issue such Manual which will bear the name of Mrs. Knott instead of the name of Mr. Dittemore as one of the trustees or directors—which is it, Mr. Thompson?

MR. THOMPSON: Directors of the Church.

THE COURT: I thought so; I wasn't sure. The question whether he was lawfully removed from his office is pending before the court; what his first position may have been, need not be restated here, it is fully understood and is wholly immaterial; his final legal position was that he never had been lawfully removed, as I have just stated, and after having been tried out in a way which is familiar to counsel, questions of law involved are pending on the record before the full bench for decision. Publication of the names of the so-called Directors who may be de facto usurping the powers of one of them at least authorized to act de jure until such time as the main question has been determined—the publication of a Manual with a list which omits Mr. Dittemore's name and puts in Mrs. Knott's name is not preserving the situation, and—without further enlargement—neither is it justice to Mr. Dittemore. Now if Mr. Choate will embody in an interlocutory decree the stipulation that until further order of the court no new Church Manual shall be issued, and because of the stipulation no injunction is ordered, that will be amply sufficient; but if for any reason you cannot do that, Mr. Choate—I can understand by reason of your constituency you may have some delicacy about it—I will issue an ad interim injunction until further order of the court.

MR. CHOATE: I cannot stipulate that no new Manual will be issued, but I can stipulate that there will be no change in page 21, which is the page in controversy.

THE COURT: That is equivalent to the same thing.

MR. CHOATE: Of course they have to put out Manuals from time to time.

THE COURT: When that decree is entered it is equivalent to saying

when the new Manual is issued it shall bear the name of John V. Dittemore until the further order of the court.

MR. THOMPSON: I don't know why the Publishing Society Trustees, making no objection, shouldn't be enjoined?

THE COURT: The clerk calls my attention to the fact that it is not an original bill.

MR. THOMPSON: It is a supplemental bill; the original bill has been referred to Judge Dodge.

THE COURT: I understand all that.

MR. THOMPSON: This is not an amendment.

THE COURT: It really, then, is in the nature of a petition for supplemental relief pending proceedings. It is not very material one way or the other; the stipulation is all that is necessary, put in that form, that if any Manual is issued it shall bear the name of John V. Dittemore, that covers you and will continue in force until the further order of this court. You may agree between yourselves as to a Master.

MR. THOMPSON: Judge Dodge is already master in the case.

MR. CHOATE: I should like to have the case put down for hearing on next Tuesday, when we can discuss it. I should strenuously object to Judge Dodge as a master.

THE COURT: Nothing remains but the appointment of the master to hear additional allegations of fact and any additional issues which are raised by the bill or petition and the answer. I will hear you fully on it next Tuesday morning, but I ought to say to you now, Mr. Choate, you will have to advance very strong reasons in order to lead the court to appoint a new master.

MR. THOMPSON: May I ask how relief is to be obtained by me against the Publishing Society? Are Mr. Whipple's clients joined in the stipulation?

THE COURT: If they don't have anything to print they can't do the printing. I understand Mr. Choate holds the control.

MR. CHOATE: I don't know as that is quite true.

THE COURT: I asked you if this could be done without your consent or order and I understood it could not.

MR. CHOATE: I think you are right, because we have to approve the page.

MR. THOMPSON: Now if your Honor please—

THE COURT: I don't care to hear from you further just now. Are you willing, Mr. Whipple, to join in such a stipulation?

MR. WHIPPLE: Yes, your Honor.

THE COURT: Very well, that ends it. Call the next case.

STATUS QUO IS PRESERVED

Trustees Under Mrs. Eddy's Will Stipulate Not to Take Name of Mr. Dittemore From Manual

BOSTON, Massachusetts—On April 13, here was a hearing before Mr. Justice Braley in the Supreme Judicial Court in the case of Dittemore v. Dickey, et als., upon the motion of the defendants Dickey, Neal, Merritt, Rathvon and Fernald, to cancel the stipulation or the continuance of the name of John V. Dittemore on Page 21 of the Manual and upon the question of sending the case to a Master.

After hearing counsel, Judge Braley stated that he felt that the matter should be held in abeyance until the decision of the cases now pending before the Supreme Court. Mr. Choate, on behalf of the defendants, thereupon consented to the continuance of the stipulation. Judge Braley stated that in the event that Mr. Choate wished for any reason to withdraw from the stipulation he might do so upon notice and that he would thereupon issue an interim injunction.

After hearing counsel upon the question of sending the matter to a Master, Judge Braley, with the consent of all counsel, ordered that the case stand over until the decision by the Supreme Court in the main cases came down.

The court stenographer being unable to furnish a transcript of the proceedings before the court for publication today, the verbatim report of yesterday's proceedings will be published in The Christian Science Monitor tomorrow, or as soon thereafter as the transcript can be furnished for publication.

DETAILED REPORT OF DITTEMORE HEARING

Complete Record of Hearing on Motion by Trustees Under Mrs. Eddy's Will to With- draw From Stipulation

BOSTON, Massachusetts—The verbatim report of April 13, 1921, proceedings in the case of John V. Dittemore vs. Adam H. Dickey et als. is published by The Christian Science Monitor today. Only a news item of this report was available for publication in Thursday morning's issue. The complete record reads as follows:

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

Suffolk, ss. In Equity.

DITTEMORE v. DICKEY ET AL.

BEFORE MR. JUSTICE BRALEY,

Wednesday, April 13, 1921.

Appearances:

William G. Thompson, Esq., for the plaintiff.

Charles F. Choate, Jr., Esq., for the defendants.

MR. THOMPSON: We are ready for hearing, so far as there is any need of one. Your Honor assigned today to determine the question who should be appointed master, we recommending Judge Dodge.

THE COURT: Mr. Choate wanted to try some issue of fact.

MR. THOMPSON: Since that time a motion has been filed by Mr. Choate to discharge the stipulation entered into a week ago; as to that I do not know what has been done.

MR. NASH: Mr. Choate desires to be heard upon it when the case is reached upon the list.

THE COURT: I have reached it now; is he ready to be heard?

MR. NASH: Mr. Choate was anticipating this case would be heard at the second call.

THE COURT: He has no reason to anticipate it; I hear the cases as I come to them. You may have time to get him here.

THE COURT: Mr. Choate, before taking up this case I will hear you on your motion, which was in the Dittemore case, I think. It stood over, you may recall, until this morning. I understood from you there was some issue of fact on the petition that you wanted to determine.

MR. CHOATE: I thank your Honor for being willing to take it up now.

THE COURT: I will take it up now.

MR. CHOATE: I filed a motion to cancel the stipulation because there were certain matters I thought ought to be brought to your Honor's attention in the proper way which, when shown to your Honor, it might seem to you it was inadvisable for the court to take any action to interfere with the action of either party.

THE COURT: I will hear all you wish to say.

MR. CHOATE: The petitioner here, John V. Dittemore, was one of the Directors of the Christian Science Church and felt that his rights had been interfered with by the action of the other Directors in removing him from office. At the same time there exists a Board of Trustees under Mrs. Eddy's will, which is made up of the five Directors and Mr. Fernald, who is not a Director,—Mr. Fernald of Concord, New Hampshire. These Trustees, appointed to administer the trust under Mrs. Eddy's will, were appointed

by the court in New Hampshire and they own the copyrights on Mrs. Eddy's books. These are entirely independent of and separate from the Journals and other publications which are handled by the Trustees of the Publishing Society, who are the persons with whom the Directors of the Church are litigating certain questions which are now before the Supreme Court, which grew out of a contract between the Trustees under the Will of Mrs. Eddy and the Trustees of the Publishing Society by which the Trustees of the Publishing Society are made agents of the Trustees under Mrs. Eddy's will to publish Mrs. Eddy's works which are covered by copyrights.

Now when the original bill was brought by the Trustees of the Publishing Society against the Directors and when Mr. Dittemore brought his original bill against the Directors, a stipulation was entered into in the following language: "Until the coming in of the master's report, or the further order of the Court, none of the defendants will take any action intended or tending to deprive the plaintiff of the occupancy of the rooms hitherto and now occupied by him under the claim alleged in the bill that he is one of the Christian Science Board of Directors in the building 236 Huntington Avenue, and that the plaintiff may retain, free from interference by the defendants or any of them, his books, papers, and other documents, whether belonging to him personally, or received by him as a Director, or by reason of the fact that he was a Director, and located in said rooms or elsewhere." A very limited stipulation which is clearly not affected by anything that is presented by the supplemental bill that is now filed.

Now the supplemental bill that is now filed refers in its first paragraph to the pending litigation and the fact it has been referred to a master and the master's report has come in and the case has been before the Supreme Court. Then it alleges that "in addition to the proceedings above mentioned, certain new facts have occurred . . . vitally affecting the relief to which the plaintiff is entitled. Said new facts, together with certain facts not new but necessary to explain the legal significance of said new facts, are as follows, to wit:" Then follows a paragraph stating that the defendants are Trustees under Mrs. Eddy's will appointed by the Probate Court of New Hampshire; that they are the legal owners of the copyrights on Mrs. Eddy's books including the copyright on the Manual of The First Church of Christ, Scientist; that they entered into a contract with the Trustees of the Publishing Society to publish these books including the Manual, and to the bill is attached a copy of the contract; then the bill alleges that the defendants requested The Christian Science Publishing Society Trustees to publish a new edition of the Manual, or new

copies of the Manual for circulation, in substitution for the copies now outstanding, "in which new copies this plaintiff's name should be omitted from the list of 'Church Officers' and from the list of members of 'Christian Science Board of Directors' printed in all outstanding copies of the Manual near the beginning thereof, as appears in the copy annexed to the bill herein and marked Exhibit 'C' and to substitute for the plaintiff's name as a Church Officer and member of said Board, the name of the defendant Annie M. Knott. Said Christian Science Publishing Society trustees then objected to complying with said request on the ground that the question whether this plaintiff or Mrs. Knott was an officer of said Church and a member of said Board of Directors was in litigation, both in the present suit of Dittmore v. Dickey et als. This plaintiff also at that time protested against said request and objected on the same ground, and also on the ground that any such change pendente lite would seriously alter the status quo in both said cases, and especially in the present case, to his disadvantage, and would tend to deprive this Court of jurisdiction over the subject matter of this suit, and on the ground that said defendants had no legal right either as trustees under Mrs. Eddy's will or otherwise to request or require said Publishing Society trustees to make said change." Then follow various allegations about the motives of the defendants in doing it. He says "in reality actuated solely by a desire to alter the status quo in the present case to the detriment of the plaintiff and to the advantage of Dickey, Neal, Merritt, Rathvon, and Knott in their capacity of parties defendant herein, and to diminish or destroy whatever benefit the plaintiff might obtain from a decision of the Full Bench in his favor on said exceptions, if the plaintiff should obtain such favorable decision, and also by a desire to injure the plaintiff's influence, reputation, and standing with the members of said Church and with all Christian Scientists." Then the bill alleges that the defendants, as Trustees under the Will of Mrs. Eddy have voted to request the Trustees of the Publishing Society to publish the Manual with a list of the names of the officers which shall include Mrs. Knott's name in place of Mr. Dittmore's name; that the plaintiff has protested against it and for a long time the Trustees of the Publishing Society had declined to acquiesce. Then the bill says: "Recently said Eustace, Ogden, and Rowlands"—they are the Trustees of the Publishing Society—"being unwilling to endure the misrepresentation of their motives by said defendants which they correctly foresaw would follow a further refusal to comply with said demand, and fearing that they would become involved in further litigation with said defendants if they continued to refuse compliance with said defendants' demands, consented to com-

ply with the same, and have begun to prepare a new edition or new copies of said Manual omitting this plaintiff's name as an Officer and Director of said Church, and have sent proof sheets of the same (which said defendants have approved) and are intending to print and publish such new copies to be circulated as aforesaid. A copy of said proof sheet is hereto annexed, made part thereof, and marked Exhibit '3.'

"(g) The publication and circulation of such new copies of the Manual will cause irreparable injury and damage to the plaintiff for which there is no adequate remedy at law, and will greatly diminish the benefit which he would otherwise obtain from a decision of the full court, if the same should be favorable to him, and will in any event deprive him of that fair hearing and undisturbed adjudication of his rights to which he is, both under the Constitution of the Commonwealth and as a matter of common justice entitled."

Now the answer which has been filed by the defendants admits the preliminary allegations of the bill and then avers: "These defendants as Trustees under the Will of Mary Baker Eddy, own the copyright of Mrs. Eddy's books, including the Manual of The First Church of Christ, Scientist, in Boston, Massachusetts. Said Manual, in its successive editions, states the names of the officers of said Church from time to time, including the names of the Christian Science Board of Directors. There is a great demand for copies of the Manual throughout the United States and elsewhere, especially from new members of said Church, which is known as The Mother Church, and has members in the branch churches throughout the world. The sales of the Manual for 1919 and 1920 were in excess of 26,000 for each year.

The contract between the Trustees under the Will of Mrs. Eddy and the Trustees of The Christian Science Publishing Society, Ex. 2, requires said Publishing Society, acting as the sole agents of the owners of the copyright, to publish in behalf of the owners all the works of Mrs. Eddy which may be issued.

3. For many years the owners of the copyright and the publishers, their agents, have been careful to see that the list of names of directors and officers appearing in said Manual, should coincide exactly with their names as they have appeared from time to time on the records of The Mother Church. It has been the practice in each year, just prior to the Annual Meeting of The Mother Church held the first Monday in June, to keep in suspense orders for Manuals and as soon as the new officers were elected, to substitute their names for the names of the outgoing officers, and fill orders with new books containing the new list of names.

These defendants did not in 1919

request the Trustees of The Christian Science Publishing Society to publish a new edition of the Manual substituting therein for the plaintiff's name as a member of the Christian Science Board of Directors the name of the defendant Annie M. Knott. Prior to the annual meeting of The Mother Church on June 2, 1919, these defendants on May 27, 1919, called to the attention of the Trustees of the Publishing Society the fact that the name of the plaintiff, who had resigned as Clerk on November 2, 1917, appeared as Clerk on pages 114, 116 and 118, and also called their attention to the fact that his name appeared as a Director on page 21.

Thereupon these defendants approved the issue of new copies of the Manual containing the names of the newly elected President of The Mother Church and the Clerk who had been chosen in place of the plaintiff, but they took no action in regard to the continuance of the plaintiff's name as Director.

4. At the Annual Meeting of The Mother Church on June 7, 1920, a new President and two new Readers were elected. But the Trustees of the Publishing Society for several weeks continued to fill orders for Manuals with books containing the names of the President and the Readers whose terms expired on June 7th, although purchasers desired Manuals showing the new officers.

On July 19, 1920, these defendants requested the Trustees of the Publishing Society to revise page 21 of the Manual by substituting the names of the new President and Readers and by substituting the name of the defendant Annie M. Knott for that of the plaintiff in the list of Directors. The Trustees of the Publishing Society printed the names of the new President and Readers, but refused to substitute the name of Annie M. Knott for that of the plaintiff unless the plaintiff should give his consent, and submitted to these defendants no proof of the new page 21.

Thereafter at meetings of the Trustees under the Will of Mrs. Eddy held October 6 and December 22, 1920, at which all the Trustees, including the plaintiff were present, it was voted that the Trustees of the Publishing Society should print page 21 of the Manual with the name of Annie M. Knott substituted for that of the plaintiff, the plaintiff not voting at either meeting.

Thereupon on December 22, 1920, the Trustees under the Will of Mrs. Eddy wrote to the Trustees of the Publishing Society that they on their own responsibility requested said substitution to be made, and the Trustees of the Publishing Society on December 24, 1920, replied that they would make the change provided the plaintiff should consent to it. On January 11, 1921, the Trustees under the Will of Mrs. Eddy replied to the Trustees of the Publishing Society that the records of the Church should be accepted

as indicating who the Church Officers are for the time being, and further wrote:

"When, if at all, Mr. Dittemore establishes the rights that he is depending upon, we shall of course be governed accordingly. But meantime we feel that there is no safer guide than the records of the Church, and we therefore ask compliance with our request."

Again on February 10, 1921, the Trustees under the Will of Mrs. Eddy wrote to the Trustees of the Publishing Society repeating their request and asking that it be complied with without further delay. On February 16, 1921, the Trustees of the Publishing Society submitted a proof of page 21 printing the name of Annie M. Knott at the head of the list of directors in the place formerly occupied by that of the plaintiff and making other changes. The Trustees under the Will of Mrs. Eddy on February 18 suggested variations in the proof, particularly in regard to the order and arrangement of the names of the Directors and asked for a new proof. At their meeting on February 23d no proof having been submitted to them, they voted to approve such revised proof if it should coincide with the specifications in their letter of February 18th. But the Trustees of the Publishing Society have not yet submitted to them the revised proof although on or before February 23d they gave it to the plaintiff; but have advised the Trustees under the Will of Mrs. Eddy under date of February 25, 1921, that no further steps would be taken in the matter because of the filing of the plaintiff's supplemental bill and the issuing of his order of notice.

5. The Trustees under the Will of Mrs. Eddy have consulted counsel from time to time as to their rights and as to the proper form of their votes and their requests to the Trustees of the Publishing Society.

During the summer and autumn of 1920, before the arguments in the full court, the question of having page 21 of the Manual correspond with the Church records was the subject of frequent conferences between the Secretary of the Trustees under the Will of Mrs. Eddy and their counsel.

6. Throughout their dealing with the matters involved in this supplemental bill these defendants have acted solely in the interest of their trust under Mrs. Eddy's will for the advancement of Christian Science, and with a view that page 21 of the Church Manual shall truly state the recorded facts.

These defendants have received written communications from numerous branch churches and members of The Mother Church expressing their earnest conviction that the Manual ought to state the names of the directors as shown by the Church records.

They specifically deny that they have been actuated by any desire to

alter the status quo in the case of *Dittemore v. Dickey* or to destroy or diminish any benefit which the plaintiff may obtain from the decision of the full bench, if in his favor, or by any desire to injure the plaintiff's influence, reputation and standing with the members of The Mother Church and with all Christian Scientists, but say that if the plaintiff's name shall continue to be published as a member of the Board of Directors, indefinitely, it being by no means clear that a decision of the full bench in the cases already argued before it will settle the plaintiff's rights without a further hearing of evidence in *Dittemore v. Dickey*, then the plaintiff will continue to be falsely represented as a member of the Board of Directors and the defendant Annie M. Knott, who is a director de facto with a right to perform all the functions of a director, will continue to be injured by the same implied false representation, to wit: that the records of The Mother Church show the plaintiff to be a director when in fact they show that Annie M. Knott, instead of the plaintiff is a director.

7. They admit the plaintiff has protested against the views and aforesaid acts of these defendants and has asked them in substance to continue to advertise him as a Director of The Mother Church pending the decision of his case.

It seems to me the position presented by this supplemental bill is quite distinct from the original quarrel between the Directors and Mr. Dittemore. These defendants, so far as they are Trustees under the Will of Mrs. Eddy, are acting entirely under a distinct right and not acting as Directors of The Mother Church, but in the performance of their duty under Mrs. Eddy's will, that is, to secure the publication of her works in accordance with the directions of her will. It having been the invariable practice for many years to publish the names of the officers, the question immediately comes up, how shall the publication be made? There is a dispute between Mr. Dittemore and Mrs. Knott as to which occupies that office. The Church records show Mrs. Knott occupies it. Mr. Dittemore questions it; he has it in litigation. It is a dilemma where they must choose one horn or the other. They felt they were pursuing the proper course if they published to the members of their Church as a director the name of the person who was to perform the duties of a director. Mr. Dittemore hasn't sat as a director, has performed no action as a director, has not participated in any meetings or passed any votes or aided in making any decisions in two years. Mrs. Knott has; and as to all third persons we think, and believe and submit that the action of Mrs. Knott is valid and legal and is the action of a de facto director and as such that she would be entitled to have her name appear among the

Board who are in fact acting and directing the affairs of the Church.

Now it is perfectly clear from hearing these two pleadings that there was no occasion to invoke the assistance of the court, because the publishers of the Manual, that is the Trustees of the Publishing Society, on the filing of the plaintiff's bill had notified the other defendants that they should take no further action. The Trustees under the Will do not publish themselves, cannot publish themselves; they haven't it in their power to put out any Manual with the names of anybody in it. The only persons who have that power are the Trustees of the Publishing Society who have declined upon the filing of the plaintiff's bill, to do anything further until the final decision of the court. There was, therefore, no exigency which existed when the plaintiff pressed here for an injunction.

In the second place we submit there isn't any injury that is likely to come to the plaintiff if the defendants, including the Trustees of the Publishing Society, should be left to their own devices. It certainly does not affect the jurisdiction of the court to determine his legal right to the office of director. He is not prejudiced in any way in respect to his rights as a director when he is reinstated. He is not prejudiced in litigating his right before this court or any court by what the defendants do or cause to be done in books which they have the sole right to publish. When one stops to consider a moment that the defendants, that is the Trustees under the Will, are for all purposes the owners of these books; that they may publish them in such form as under the directions of the will it seems to them they ought to, we submit that it is not any invasion of the plaintiff's rights which is going to cause him irreparable injury if they do publish Mrs. Knott's name. He is not entitled to call upon them to publish anything. He is not, as matter of right, entitled to have his name in the book at all. If they should see fit not to publish the names of the officers they need not do it, and it seems rather a harsh operation of a court of equity's powers, if the Manual has been published with his name in it, to compel the defendants to continue its publication and to retain his name in it until this question is settled as a final question between Mr. Dittemore and the Directors. If at any time it is established that he is a director, then the question whether he has a right to have his name in the book can be properly raised; but if it is at best uncertain, I submit it is not at all established, that he has any right to have his name in the book at all, whether he is a director or not, it has seemed to us that it was a rather severe application of the rules of equity to require these defendants to go on publishing a thing which is contrary to the fact simply to protect an individual when

the rights of a great many others and the interests of a great many other persons are involved. It is not quite as if the only persons who were interested or had rights or equities in this litigation were Mr. Dittmore on the one side and the five Directors, or the five persons who are Trustees under the Will on the other side. These books are published for the benefit of all Christian Scientists and for the benefit of all congregations of Christian Science Churches. They are entitled to know who are the persons who are conducting the affairs of their Church, and the fact is indubitable that Mrs. Knott and not Mr. Dittmore is occupying that position, and as far as the directors have authority, is exercising that authority.

Now to sum up in a word: It seems to us that there is no danger of anything happening, because in the first place the Trustees say they will not do anything; in the second place there can be no harm come to the plaintiff if the Trustees of the Publishing Society did acquiesce in the request of the Trustees under the Will and put Mrs. Knott's name in place of Mr. Dittmore's. It is not as though this book went out for all time. It comes out in successive editions, not a great many months apart, and it is easy to correct if the decision of the Supreme Court requires it to be corrected, and we submit it is rather an invasion of the rights of the Trustees as the owners of the copyright, the publishers of the book, who may either put names in or leave them out, to require them to stand bound by an obligation to keep Mr. Dittmore's name in any books which they, themselves, have got to publish and offer to the public, until it has been established by the Supreme Court, and the question whether Mr. Dittmore, even if he is a director, has a right to have his name appear there can be further presented to the court. Now when the motion came up a week ago I asked your Honor's consideration of other engagements I had made to have a week's time in which to present it. Meantime I stipulated with the court's approval that nothing should be done by the defendants until the further order of court. It is only now that I ask leave to present the matters which I then had no opportunity to present: if your Honor feels on this showing that the stipulation should stand, of course I acquiesce; it shall stand. But if, on the other hand, it seems that there is nothing really in this supplemental bill which should invoke the court's exercise of its equity powers, we ask to have the stipulation cancelled and leave the parties as they were.

THE COURT: Do you desire to go out to a master to try the issues of fact raised by the pleadings?

MR. CHOATE: Unless Mr. Thompson waives his allegations as to motives we must go to a trial of the facts.

THE COURT: I shall have to appoint a master. Are you and Mr. Thompson here alone of counsel, this morning, in the matter here?

MR. THOMPSON: Yes; Mr. Withington is here, and General Streeter is here also.

THE COURT: Mr. Choate, you have gone over this since the last hearing, and of course you understand perfectly well that the Court will not hold you to any stipulation which you do not want to be held to, or one which you have any doubts about, or concerning which you would a little rather not have stipulated. I do not want you to feel that you are bound for a moment by the stipulation—

MR. CHOATE: I want to be entirely guided by the court. I am perfectly willing to stipulate—

THE COURT: I should relieve you at once if you had the slightest doubt about it, and I can readily understand how counsel might have doubts with respect to it. I went over this case a week ago in the light of what was said generally, and what Mr. Choate has said this morning is more in detail, merely corroborative of what was said in outline a week ago, and the answer raises some questions—I will not intimate any view about it. If Mr. Thompson wants to try an issue of fact he is entitled to try it, although perhaps I ought to add that this is not a case where motive plays any part; it is either to be done or not to be done; nor am I passing, as counsel well know, upon perhaps the strict legal right or their technical legal right to do this thing. I have intimated no opinion on the matter. But the ground upon which I acted before and upon which I still think I ought to act is, that here is this litigation with all its ramifications, which need not be repeated, including also, as one important element, the removal of Mr. Dittmore, with a master's report which goes at length into that issue, which is in favor of Mr. Dittmore, and with the case now pending before the full bench of this court on all these issues. I think under such circumstances that all the parties are entitled to have the exact situation maintained—when I say "exact situation" I mean the situation as affected by material issues—there are some issues in the case which I should not call material at all—until the final decision of the court. This issue has been made and is a material issue, and of course it is perfectly clear that no irreparable injury will be inflicted upon anybody. It is two-edged, it applies to one side as well as the other. If this Manual goes out as it is, or as it has heretofore been published, or does not come out at all—although I appreciate very fully what Mr. Choate says about it—here is a great religious organization with its system of procedure by which this Manual is published periodically—I recognize all that; yet at the same

time the fact that the whole system from turret to foundation stone is in litigation is an answer to it all. It is apparent, I think, Mr. Choate, that I ought to let that stipulation stand. I do not need perhaps to add that if at any time you find it at all burdensome I shall relieve you from it. I will appoint a master to hear the allegations of fact that you want to try in this case between now and the rising of the court in June. Do you really think on each side that with this stipulation on the record you want to spend your time going out to a master to try some issue or other? You are protected, Mr. Thompson.

MR. THOMPSON: May I ask one question so I may be perfectly sure I understand the significance of what has been said here by your Honor? Of course I understand if any counsel finds it inconvenient to remain a stipulating party he is at liberty to be generally relieved by order of the court. That means, of course, my motion for a temporary injunction at once revives?

THE COURT: If Mr. Choate should say he ought not to be held any longer I should at once relieve him and order an ad interim injunction.

MR. THOMPSON: Without any further discussion. I understood or at least supposed that was so; I wanted to be sure.

THE COURT: It must be so; that is the only way in which the status quo could be preserved.

MR. THOMPSON: Will your Honor allow me to confer with my client and my associates in order to consider the question you last put about proceeding before the master?

THE COURT: Is there really any issue of fact to be tried out?

MR. THOMPSON: Up to this moment the only persons who have had opportunity to state the facts consecutively as they occurred are the other side. I don't suppose it is necessary for me at this time to correct anything?

THE COURT: I don't think there is any necessity for you to say anything at this time.

MR. THOMPSON: I supposed so. May I have time to confer with my associates?

[Mr. Thompson confers with his client and associates.]

MR. THOMPSON: If your Honor please, in view of what your Honor has said about the injunction, we are unanimously of opinion that there is no occasion for the reference of this case to a master.

THE COURT: I didn't suppose so.

MR. CHOATE: May I ask your Honor a single question at the bench in reference to a matter you spoke to us about?

[Conference of Court and counsel at the bench.]

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 438 Letter, Oct. 18, 1909, re repeal of by-law, Art. XXVI, Sect. 8, "Change of Location" p. 355, c. 2
 440 Letter, Jan. 24, 1910, re amendment Art. XXX, Sect. 8, "Not Members of the Mother Church"..... p. 355, c. 2-3
 442 Letter, March 10, 1910, re amendment Art. XXX, Sect. 4, "Remuneration and Free Scholarship"..... p. 355, c. 3
 444 Letter, March 10, 1910, re amendment Art. XXVI, Sect. 5, "Pupils' Tuition" p. 356, c. 1
 446 Letter, March 15, 1910, re amendment Art. VIII, Sect. 15, "Church Organization Ample" p. 356, c. 1-2
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 450 Letter, May 18, 1910, re amendment Art. VIII, Sect. 8, "No Malpractice".. p. 356, c. 3
 452 Letter, Aug. 27, 1910, re amendment Art. VIII, Sect. 22, "Practitioners and Patients" p. 357, c. 1
 456 Letter, Feb. 5, 1903, inclosing by-laws. Request to vote on by-law re number of Directors, also to consider candidate, Mr. Archibald McLellan..... p. 358, c. 1-3
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- 460 Letter, received Nov. 21, 1910, requesting the appointment of Adam H. Dickey as a member of the Board of Directors..... p. 363, c. 2-3
- 691 Letter, Aug. 9, 1908, from Adam H. Dickey, Secretary, correcting letter of July 28th, and requesting Trustees to start daily paper without delay... p. 486, c. 3
- 751 Letter included, July 10, 1909, re profits from Hymnal, and increase in Directors' salary p. 703, c. 1-2
- 753a Letter, May 8, 1893, re laying foundation of The First Church of Christ, Scientist p. 710, c. 1-3
- 754 Letter, Sept. 9, 1893, re testimonial engraved on tablet of stone..... p. 710, c. 3
- 755 Letter, Sept. 30, 1904, re gift of book, "Bohemia" p. 710, c. 3 to p. 711, c. 1
- 756 Letter, July 22, 1909, re a student's movements p. 711, c. 1
- 757 Letter, Oct. 27, 1910, re permit to take measurements in Mother Church.... p. 711, c. 1
- 758 Letter, Feb. 5, 1906, re amendment, Art. XXXVII, Sect. 6, "Case of Necessity" p. 711, c. 2
- 759 Letter, June 12, 1908, re adoption of Art. XXXI Sect. 5, "Circuit Lecturer" p. 711, c. 2
- 760 Typewritten Letter, June 14, 1908, re adoption of by-law, "No More Communion" p. 711, c. 2-3
- 765 Letter, dated probably Nov. 12, 1907, re questions as to Church By-laws.. p. 713, c. 1-2

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- 160 Letter, Aug. 22, 1898, to Mr. McKenzie, instructions re establishing "Christian Science Messenger"..... p. 255, c. 2
- 389 Letter, Aug. 23, 1901, to a student, re Bible Lesson Committee..... p. 335, c. 3
- 466 Letter, Jan. 22, 1898, to students, re conveying Journal to Mother Church, and real estate quit-claimed to Mrs. Eddy by C. S. Publishing Society, to Mother Church p. 372, c. 1-2
- 467 Letter, Jan. 18, 1898, to Beloved Students, re writing Deed of Trust (Jan. 15, 1898)..... p. 372, c. 2-3
- 468 Letter, Jan. 17, 1898, to a student, re authorship of Deed of Trust (Jan. 15, 1898)..... p. 372, c. 3
- 705 Letter, Feb. (2nd week) 1898, to Mr. McKenzie, re eighth edition of Church Manual, and helpfulness of Trustees p. 554, c. 1-2
- 732 Letter, March 1, 1897, to Mr. Neal, re his appointment to Publication Committee p. 665, c. 1
- 733 Letter, Oct. 13, 1898, to Joseph Armstrong, re release of Mr. Neal as Trustee, and appointment of Mr. Clark p. 666, c. 1-2
- 739 Letter, March 19, 1903, to Mr. McLellan, "N. B." referring to his name not appearing on Deeds..... p. 686, c. 1-2
- 764 Letter, May 23, 1906, to a student, re instructions to follow Church Manual p. 712, c. 3

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- 463 Letter, Jan. 15, 1898, re Deed of Trust p. 369, c. 3 to p. 370, c. 1
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- 112 Includes two letters—one dated May 3, 1895, re action on By-law, and malpractice and disobedience of students p. 234, c. 2-3

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- 784a* Letter, Jan. 15, 1898, expressing gratitude p. 718, c. 1

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- 421 Letter, May 21, 1909, re repealing by-law, Art. XXXIII, "Missionaries," with Mrs. Eddy's consent endorsed.. p. 351, c. 3

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- 707½ Letter, Aug. 11, 1898, from Wm. P. McKenzie, re trusteeship of Mr. Bates being declared vacant..... p. 556, c. 1-3
- 708 Letter, Aug. 19, 1898, from Wm. P. McKenzie, re nomination of Judge Hanna to the Board of Trustees..... p. 557, c. 1
- 710 Letter, Aug. 25, 1898, from Wm. P. McKenzie re resignation of Mr. Armstrong as Business Manager; change of by-law re filling vacancies on Board p. 558, c. 1
- 711 Letter, Sept. 6, 1898, from Wm. P. McKenzie, re appointment of Mr. Hatten to the Board of Trustees..... p. 564, c. 1-3
- 728 Letter, Jan. 15, 1909, re copyrighting the Monitor p. 640, c. 1

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- 6 Letter, Oct. 11, 1918, in answer to Directors' Letter of Oct. 8, 1918..... p. 19, c. 2-3
- 7 Letter, Nov. 11, 1918..... p. 19, c. 3
- 9 Letter, Dec. 18, 1918, in answer to Ex. 8 p. 20, c. 2-3
- 11 Letter, Dec. 18, 1918, in answer to Ex. 10 p. 20, c. 3 to p. 21, c. 1 p. 423, c. 3
- 14 Letter, Dec. 24, 1918, answer to Ex. 12 and Ex. 13..... p. 21, c. 3
- 17 Letter, Dec. 31, 1918 (see Ex. 377)... p. 22, c. 3
- 29 Letter, March 21, 1919..... p. 40, c. 1
- 30 Letter, March 25, 1919, informing Directors of the filing of the Bill in Equity p. 40, c. 1
- 39 Letter, May 6, 1918, re Mr. Stanger.. p. 69, c. 1
- 40 Letter, June 4, 1918..... p. 69, c. 2
- 54 Copy of Letter, April 1, 1919..... p. 90, c. 2
- 56 Copy of Letter, April 28, 1919..... p. 90, c. 3
- 73 Copy of Letter, Jan. 5, 1917..... p. 128, c. 3 to p. 129, c. 1
- 75 Copy of Letter, Jan. 10, 1917, bearing stamp, "Approved Jan. 10, 1917, by the Board of Directors"..... p. 128, c. 3 to p. 129, c. 1

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 69 Copy of Letter, Sept. 9, 1918..... p. 408, c. 2
 62 Copy of Letter, March 6, 1919, reply to Ex. 661..... p. 446, c. 3 to p. 447, c. 1
 70 Letter, Business Manager, Christian Science Publishing Society, to Directors, March 14, 1919..... p. 449, c. 1
 74 Letter, March 12, 1919, reply to Ex. 673 p. 450, c. 1
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 50 Printed Circular Letter from the Publishing Society to "Dear Friends," without date..... p. 84, c. 2
 63 Circular Letter on letterhead of Publishing Society, signed David B. Ogden, Manager, and addressed "Dear Friend"..... p. 98, c. 3 to p. 99, c. 3
 69 Form Letter, May 5, 1919, from testimony in Contempt Citation Proceedings..... p. 115, c. 3 to p. 116, c. 1
 70 Letter, Feb. 3, 1919, to Frederick A. Bangs, First National Bank Bldg., Chicago, Ill..... p. 124, c. 3 to p. 125, c. 1
 72 Letter from Mr. Watts, Business Manager, to Third Assistant Postmaster-General, Dec. 7, 1918..... p. 128, c. 3 to p. 136, c. 3 to p. 137, c. 3

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 33 Letter from Mr. Merritt, July 26, 1917, tendering his resignation as a trustee p. 44, c. 1-2
 34 Copy of Letter from Mr. Watts, Feb. 17, 1919..... p. 206, c. 3
 26 Copy of Letter, Mr. Rathvon to Trustees and Directors, Feb. 10, 1919.... p. 636, c. 2 to p. 637, c. 1

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 10 Letter, Dec. 18, 1918, re having a joint meeting of the Boards..... p. 20, c. 3
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 20 Letter, Jan. 22, 1919..... p. 24, c. 2-3
 21 Letter, Jan. 22, 1919..... p. 24, c. 3 to p. 25, c. 2
 24 Letter, Feb. 3, 1919 (see Ex. 24a).... p. 30, c. 2-3
 26 Letter, Feb. 24, 1919, re memo for joint signature (see Ex. 26a)..... p. 35, c. 2 to p. 36, c. 3
 28 Letter, Directors to Mr. Eustace, and Mr. Ogden, Trustees, March 18, 1919 p. 39, c. 2-3
 38 Letter, June 8, 1914..... p. 68, c. 2-3
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 55 Copy of Letter, April 3, 1919..... p. 91, c. 3
 74 Original Letter, Mr. Jarvis, Secretary Board of Directors, to Mr. Eustace, Secretary Board of Trustees, Jan. 5, 1917..... p. 128, c. 3 to p. 129, c. 1
 77 Letter from Mr. Johnson, Secretary of Directors, Jan. 25, 1908..... p. 132, c. 2
 94a Copy of Letter, Jan. 28, 1919, attached to Ex. 94..... p. 206, c. 2-3
 180 Letter, June 21, 1902, re election of Mr. McLellan and Mr. Willis as Editors, and Miss Speakman as Asst. (p. 294, Directors' Letter Press Copy Book)..... p. 261, c. 1
 181 Letter, July 5, 1903, re election of Mrs. Knott as Asst. Editor (p. 147, Directors' Letter Press Copy Book) p. 261, c. 1-2
 182 Copy of Letter, Jan. 8, 1908, Mr. Johnson to Christian Science Publishing Society, re election of Mr. Ogden as Business Manager (Directors' Letter Press Copy Book)..... p. 261, c. 2
 184 Letter, June 8, 1914, re election officers..... p. 262, c. 2-3
 387 Includes Letter, June 26, 1909..... p. 333, c. 3
 391 Original Letter, April 30, 1917..... p. 336, c. 1-2
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 562 Letter, Aug. 28, 1918..... p. 407, c. 2-3
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 669 Letter, March 13, 1919..... p. 449, c. 3 to p. 450, c. 1
 673 Letter, March 10, 1919..... p. 450, c. 1
 684 Copy of Letter Press Copy, April 13, 1916, re translation of the words "Christian Science" into a foreign language..... p. 483, c. 2-3
 700 Copy of Letter, March 3, 1919..... p. 523, c. 2-3
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 15 Letter to Business Manager, John R. Watts, Dec. 26, 1918..... p. 22, c. 1

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244	Copy of Letter to Mrs. Longyear, Nov. 6, 1917.....	p. 303, c. 1-2
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601	Letter to Mr. Dixon, Sept. 17, 1918....	p. 424, c. 2-3
675	Letter to Mrs. Longyear, March 6, 1919	p. 450, c. 2
718*	Copy of Letter to Mr. McKenzie, Editor, Dec. 23, 1918.....	p. 576, c. 3
722	Letter to Committee on Finance, Sept. 13, 1917.....	p. 619, c. 2 to p. 620, c. 1
750	Letter to Leon M. Abbott, May 28, 1914, attached to Deed.....	p. 700, c. 2
751	Letters included, (1) to Mr. Chas. F. Choate, June 15, 1915.....	p. 701, c. 2 to p. 703, c. 3
	(2) to Attys. Bates and Abbott, Aug. 8, 1917.....	p. 704, c. 2 to p. 705, c. 1

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24a	Letter, Mr. Rathvon to Trustees and Directors, Feb. 2, 1919, accompanying Ex. 24	p. 30, c. 3 to p. 31, c. 1
25	Letter from Judge Smith, Feb. 5, 1919	p. 33, c. 2 to p. 35, c. 2 p. 456, c. 2 to p. 457, c. 1
32	Letter from Mr. Watts, March 19, 1919	p. 40, c. 2
34	Letter from Mr. Eustace, Sept. 30, 1912	p. 47, c. 2
37	Letter from Mr. Ogden, July 24, 1917 re resignation as Business Manager on account of election as Trustee....	p. 67, c. 2-3
89	Original Letter from Mr. Watts, Jan. 28, 1919	p. 187, c. 3 to p. 188, c. 1
90	Letter from Mr. Watts, dated Brookline, July 28, 1917, accepting election as Business Manager.....	p. 192, c. 1
106	Letter from Mr. Dickey, Jan. 11, 1919, re dismissing one Trustee instead of demanding all to resign.....	p. 216, c. 3 to p. 217, c. 1
211	Copy of Letter from Mr. Rathvon, Feb. 18, 1919, re existing situation...	p. 291, c. 1-3
247	Letter from Mr. Dickey, Jan. 14, 1919, re question of bringing charges against Trustees individually for infraction of by-laws.....	p. 308, c. 2 to p. 309, c. 1
324	Copy of Letter (said to have been prepared by Mr. McKenzie), Feb. 15, 1916; copy taken from Mr. Neal's file (see Ex. 718* and Ex. 719).....	p. 317, c. 2 to p. 319, c. 3 p. 563, c. 1 to p. 564, c. 1 p. 568, c. 2 to p. 569, c. 3
545	Copy of Letter from C. S. Pub. Society, signed by Mr. Parker as Assistant to Business Manager, July 12, 1918....	p. 397, c. 2
566	Copy of Letter, John R. Watts, Business Manager, to Chas. E. Jarvis, Clerk, Sept. 9, 1918.....	p. 407, c. 2
572	Letter from Mr. Dixon, Sept. 8, 1918, marked for identification, and later read and admitted as Ex. 572.....	p. 408, c. 3 to p. 409, c. 2 p. 412, c. 3 to p. 416, c. 1 p. 419, c. 3 to p. 420, c. 1

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602	Correspondence between Directors and Mr. Dixon, June, 1914, marked for identification	p. 424, c. 3 to p. 425, c. 1
702	Letter from Judge Clifford P. Smith, Dec. 19, 1918.....	p. 526, c. 1-2
715	Letter from Mr. McKenzie, Jan. 27, 1919	p. 571, c. 3 to p. 572, c. 3
718*	Copy of Letter from Mr. McKenzie, Feb. 14, 1916; copy taken from Mr. Dittmore's file.....	p. 579, c. 2 to p. 581, c. 1 p. 585, c. 2-3
719	Draft of Letter made by Mr. McKenzie, Feb. 15, 1916, marked for identification	p. 584, c. 1 to p. 585, c. 2 p. 593, c. 3 to p. 594, c. 1 p. 568, c. 2 to p. 569, c. 1
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723	Letter from Committee on Finance, Sept. 17, 1917.....	p. 620, c. 1-2
726	Copy of Letter, Mr. Rathvon to Trustees and Directors, Feb. 10, 1919....	p. 636, c. 2 to p. 637, c. 1
741	Copy of Letter from Judge Smith, March 3, 1919.....	p. 691, c. 1 to p. 692, c. 1
742	Copy of Letter from Judge Smith, March 1, 1919.....	p. 692, c. 1 to p. 693, c. 3
751	Letters included, (1) from Mr. Choate, July 1, 1915.....	p. 703, c. 3 to p. 704, c. 2
	(2) from Attys. Bates and Abbott, Sept. 6, 1917.....	p. 705, c. 2 to p. 707, c. 2
792*	Letter from Mr. Streeter, Sept. 8, 1915	p. 733, c. 2 to p. 739, c. 3

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717	Letter, Nov. 7, 1916.....	p. 575, c. 1
738	Letter to Trustees under the Will of Mary Baker Eddy, Jan. 15, 1919, marked for identification.....	p. 680, c. 2 to p. 681, c. 1

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203	Original Letter, March 13, 1919.....	p. 287, c. 3 p. 297, c. 1-2
220	Copy of Letter, April 25, 1918.....	p. 294, c. 1 to p. 295, c. 3
226	Letter, March 13, 1919 (See Ex. 203)	p. 296, c. 3 to p. 297, c. 1
494	Letter, Jan. 8, 1917, re conference with Editor of The Monitor.....	p. 385, c. 2 to p. 386, c. 1
553	Letter, May 23, 1918.....	p. 400, c. 1 to p. 402, c. 1
640	Letter, Feb. 3, 1919.....	p. 437, c. 1-2
642*	Letter, Feb. 3, 1919.....	p. 438, c. 1-2
648	Copy of Letter, Feb. 10, 1919.....	p. 440, c. 1
649	Copy of Letter, Feb. 10, 1919.....	p. 440, c. 1 to p. 442, c. 1
650	Copy of Letter, Jan. 24, 1919.....	p. 442, c. 2-3
652	Letter, Feb. 17, 1919.....	p. 443, c. 2-3
655	Letter, Feb. 20, 1919.....	p. 444, c. 2-3
656	Letter, Feb. 19, 1919.....	p. 444, c. 3 to p. 445, c. 1
660	Copy of Letter, Feb. 24, 1919.....	p. 446, c. 1-2
677	Letter, March 18, 1919.....	p. 450, c. 3
695	Letter, April 25, 1918.....	p. 507, c. 2
696	Letter, May 27, 1918.....	p. 507, c. 2-3
785	Letter, Sept. 17, 1918, loaned to Mr. Krauthoff Nov. 21, 1918.....	p. 719, c. 1 to p. 720, c. 1

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87	Letter to Mr. Paul Harvey, Jan. 25, 1919	p. 159, c. 2 to p. 161, c. 1
380	Letter to Albert F. Gilmore, March 12, 1919.....	p. 332, c. 2-3

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- 98 Letter from Miss Richardson, March 15, 1919 p. 209, c. 3
- 99 Letter from Mrs. Hall, Feb. 19, 1919 p. 210, c. 1-2
- 716 Telegram, signed "McKenzie," Dec. 2, 1916 p. 573, c. 3
to p. 574, c. 3
- 716a Letter, Mr. McKenzie, April 26, 1916 p. 574, c. 1-3
- 716b Letter, Mr. McKenzie, May 9 p. 574, c. 2-3
- 716c Letter, Mr. McKenzie, May 17, 1918.. p. 574, c. 3

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- Letter from Board of Trustees of G. S. Benevolent Association, July 3.... p. 226, c. 3

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- 86 Letter, G. S. Paine to Mr. Eustace, March 4, 1919..... p. 158, c. 1
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- 88 Letter, Mr. Harvey to Mr. Watts, Jan. 24, 1919, inclosing Ex. A and Ex. B.. p. 161, c. 2
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- 243 Letter, Mr. Abbott to Judge Smith, April 22, 1919..... p. 302, c. 2-3
- 679 Portion of Letter, Mr. Ogden to Capt. Riddle, Feb. 15, 1919..... p. 459, c. 2-3
- 703 Copy of Letter to Judge Septimus J. Hanna, April 15, 1919 (without signature, but initialed "W. R. R.-F.")... p. 550, c. 2
to p. 551, c. 1
- 704 Copy of Letter, Mr. Dickey to Judge Hanna, April 15, 1919..... p. 551, c. 1
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- 713 Letter, Statement from Mr. McKenzie to Mr. Eustace, Sept. 21, 1918..... p. 567, c. 1-3
- 714 Letter, Statement from Thomas W. Hatten to Mr. Eustace, Nov. 26, 1913 to p. 570, c. 2

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- 22 Letter, Counsel for Trustees to Counsel for Directors, Jan. 27, 1919..... p. 26, c. 2
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- 23 Letter, Counsel for Directors to Counsel for Trustees, Feb. 6, 1919 (see Ex. 678)..... p. 29, c. 3
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- 54a Copy of Letter from "W-C" to Hon. John L. Bates, April 1, 1919..... p. 90, c. 3
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COMPLETE WORKS OF MARY BAKER EDDY

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- 57 Copy of "Science and Health with Key to the Scriptures"..... p. 95, c. 2
- 57a Copy of "Unity of Good and Other Writings" p. 95, c. 2-3
- 57b Copy of "Miscellaneous Writings," 1883-1896 p. 95, c. 3
- 57c Copy of "Christian Healing and Other Writings" p. 95, c. 3
- 57d Copy of "The First Church of Christ, Scientist, and Miscellany"..... p. 95, c. 3
- 57e Copy of "Poems," by Mary Baker Eddy p. 95, c. 3
- 57f Copy of "Christ and Christmas"..... p. 95, c. 3
- 57g Copy of "Manual of The Mother Church," 89th Edition..... p. 95, c. 3
to p. 96, c. 1
- 790 Copy of "Concordance to Science and Health with Key to the Scriptures".. p. 732, c. 2-3
- 791 Copy of "Concordance to Miscellaneous Writings and Works other than Science and Health"..... p. 732, c. 2-3

Other Books (Marked for Identification)

- 58 Copy of "The Christian Science Hymnal" p. 96, c. 1
- 59 Copy of "The Life of Mary Baker Eddy," by Sibyl Wilbur..... p. 96, c. 1

QUOTATIONS FROM "SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES" BY MARY BAKER EDDY

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- Page 583:14-19 p. 73, c. 2-3
- Page 570:14 p. 79, c. 3
- Page 581:4-7 p. 81, c. 2
- Page 548:16-17 p. 81, c. 2-3
- Page 60:29 p. 81, c. 3
- Page 79:31-32 p. 81, c. 3
- Page 583:12 p. 115, c. 3
- Page 110:17-20 p. 327, c. 3
- Page 174:20-21 p. 327, c. 3
- Page 96:15 p. 395, c. 1

QUOTATIONS FROM "MISCELLANEOUS WRITINGS" BY MARY BAKER EDDY

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- Page 264:10-13 p. 103, c. 3
- Page 131:9-12 p. 104, c. 1
- Page 138:17-19 p. 104, c. 1
- Page 148, "Extract from a Letter," quoted on p. 3 of Church Manual..... p. 105, c. 2-3
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- Page 4:12-14 p. 137, c. 2
- Page 7:17-24 p. 137, c. 2
- Page 284:29-31 p. 381, c. 1
- Page 140:4-10 p. 572, c. 2
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- 128 Copy of 4th Edition, 1895, marked for identification (see Ex. 394)..... p. 246, c. 1-2
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394	Copy of Manual of The Mother Church, 1895, with "By Mary Baker G. Eddy," on title page in her own handwriting	p. 337, c. 3 to p. 339, c. 3	152	Letter, July 1, 1908, correcting Manual by removing title "Executive Members" (Vol. 6, p. 123, Letters and Miscellany)	p. 253, c. 2-3
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705	Copy of "Revised Edition," 1897, or the 6th and 7th editions.....	p. 553, c. 1 to p. 554, c. 1	154	Letter, July 3, 1908, re adoption of By-Law disbanding Executive Members (Vol. 9, p. 115, Letters and Miscellany)	p. 253, c. 3 to p. 254, c. 1
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107	"Tenets" of The First Church of Christ, Scientist, adopted Sept. 23, 1892, also "Rules" 1 to 6 for government of The First Church of Christ, Scientist, Sept. 23, 1892 (Vol. 1, First Members Records).....	p. 230, c. 2 to p. 232, c. 1	156*	By-Law, "Officers and Term or Service," adopted Oct. 4, 1901 (Vol. 3, p. 45, First Members Records).....	p. 254, c. 2-3
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122	By-Laws and Amendments, Mr. Frye's letter, July 13, 1899 (Vol. 10, p. 201, Letters and Miscellany).....	p. 240, c. 3 to p. 241, c. 1 p. 222, c. 3	159	By-Law, adopted Aug. 22, 1898 (Vol. 2, p. 199, First Members Records)...	p. 255, c. 2
123	Adoption of By-Law, Feb. 10, 1898 (Vol. 2, p. 183, First Members Records)	p. 241, c. 1-2	165	Amendment, "73rd Edition the Authority," Mrs. Eddy's letter, Aug. 15, 1908 (Vol. 9, p. 139, Letters and Miscellany)	p. 256, c. 3 to p. 257, c. 1
124	Amendment, Aug. 25, 1898 (8th Edition) (Vol. 2, p. 200, First Members Records)	p. 241, c. 2-3	166	Amendment adopted Aug. 28, 1908 (Vol. 2, p. 37, Church By-Law Book)	p. 257, c. 1
125	Amendments and By-Law adopted July 17, 1899 (Vol. 2, p. 258, First Members Records), (also Letters and Miscellany, Vol. 7, p. 171), re subscribing for Periodicals.....	p. 241, c. 3 p. 251, c. 2	168	Letter, Oct. 12, 1903, re Rule to guide Editors (Vol. 4, p. 77, Letters and Miscellany)	p. 257, c. 2
126	By-law, adopted Jan. 10, 1901, re Board of Directors to transact business of The Mother Church, hitherto transacted by First Members (Vol. 2, p. 313, First Members Records)...	p. 242, c. 1-2	194	Letter, Aug. 8, 1908, re Amendment Art. I, Sect. 1 (Vol. 9, p. 135, Letters and Miscellany)	p. 264, c. 3
127	Rules and By-laws to constitute a Church Manual, adopted Dec. 28, 1895 (Vol. 2, p. 50, First Members Records)	p. 242, c. 3 to p. 244, c. 3	195	Amendment, "Names," adopted Sept. 4, 1908 (Vol. 2, p. 38, Church By-Law Book)	p. 264, c. 3
142	By-Law, adopted March 16, 1896 (Vol. 2, p. 106, First Members Records)...	p. 250, c. 1	196	By-Law, "No Executive Members," adopted July 6, 1908 (Vol. 1, p. 62, Church By-Law Book).....	p. 265, c. 1
143	Amendment, adopted Jan. 18, 1898 (Vol. 2, p. 178, First Members Records)	p. 250, c. 1-2	395	Amendment, "Soloist and Organist," Mrs. Eddy's Letter, July 30, 1908 (Vol. 9, p. 133, Letters and Miscellany), adopted July 31, 1908 (Vol. 2, p. 37, Church By-Law Book).....	p. 342, c. 2-3
144	By-Law, Feb. 10, 1898 (Vol. 7, p. 93, Letters and Miscellany).....	p. 250, c. 2-3	396	Amendment, "73rd the Authority," Mrs. Eddy's Letter, Aug. 15, 1908 (Vol. 9, p. 139, Letters and Miscellany), adopted (Vol. 2, p. 37, Church By-Law Book)	p. 342, c. 3

* Duplicate number.

* Duplicate number.

- 397 By-Law, "Overflow Meetings," Mrs. Eddy's Letter, Aug. 8, 1908 (Vol. 9, p. 137, Letters and Miscellany) adopted Sept. 4, 1908 (Vol. 2, p. 38, Church By-Law Book) p. 342, c. 3 to p. 343, c. 1
- 398 Amendment, "Names," Mrs. Eddy's Letter, Aug. 8, 1908 (Vol. 9, p. 135, Letters and Miscellany) adopted (Vol. 2, p. 38, Church By-Law Book) p. 343, c. 1 p. 264, c. 3
- 399 Amendment, "Numbering the People," Mrs. Eddy's Letter, Aug. 22, 1908 (Vol. 9, p. 141, Letters and Miscellany) adopted Sept. 4, 1908 (Vol. 2, p. 38, Church By-Law Book)..... p. 343, c. 1-2
- 400 By-Law, "Committee on Business," Mrs. Eddy's Letter, Sept. 10, 1908 (Vol. 9, p. 145, Letters and Miscellany) adopted (Vol. 2, pp. 38, 39, Church By-Law Book)..... p. 343, c. 2
- 401 By-Law, "Circuit Lecturer," Mrs. Eddy's Letter, Sept. 22, 1908 (Vol. 9, p. 149, Letters and Miscellany), adopted Oct. 5, 1908 (Vol. 2, p. 39, Church By-Law Book)..... p. 343, c. 2
- 402 By-Law, "Mother's Room," Mrs. Eddy's Letter, Nov. 14, 1908 (Vol. 9, p. 151, Letters and Miscellany) adopted Nov. 14, 1908 (Vol. 2, p. 39, Church By-Law Book) p. 343, c. 3
- 403 By-Law, "Christian Science Nurse," Mrs. Eddy's Letter, Nov. 16, 1908 (Vol. 9, p. 153, Letters and Miscellany) adopted Nov. 16, 1908 (Vol. 2, p. 40, Church By-Law Book)..... p. 343, c. 3
- 404 By-Law, "Location," Mrs. Eddy's Letter, Dec. 14, 1908 (Vol. 9, p. 157, Letters and Miscellany), adopted (Vol. 2, pp. 40, 41, Church By-Law Book).... p. 343, c. 3 to p. 344, c. 1
- 409 Amendment, "Opportunity for Serving the Leader," Mrs. Eddy's Letter, Dec. 14, 1908 (Vol. 9, p. 155, Letters and Miscellany) adopted Dec. 15, 1908 (Vol. 2, p. 41, Church By-Law Book) p. 350, c. 1-2
- 411 By-Law, "Incomplete Term of Service," Mrs. Eddy's Letter, Dec. 23, 1908 (Vol. 9, p. 161, Letters and Miscellany), adopted Dec. 31, 1908 (Vol. 2, p. 42, Church By-Law Book)..... p. 350, c. 2
- 413 Amendment, "Agreement Required," Mrs. Eddy's Letter, Jan. 15, 1908/1909 (Vol. 9, p. 163, Letters and Miscellany), adopted Jan. 15, 1909 (Vol. 2, p. 44, Church By-Law Book)..... p. 350, c. 2-3
- 415 Amendment, "Librarian," Mrs. Eddy's Letter, Feb. 4, 1909 (Vol. 9, p. 165, Letters and Miscellany), adopted Feb. 8, 1909 (Vol. 2, p. 44, Church By-Law Book) p. 350, c. 3
- 416 Amendment, "Teachers Must Have Certificates," Mrs. Eddy's Letter, Feb. 6, 1909 (Vol. 9, p. 167, Letters and Miscellany), adopted Feb. 8, 1909 (Vol. 2, pp. 44, 45, Church By-Law Book) p. 350, c. 3 to p. 351, c. 1
- 417 Amendment, "Designation of Deeds," Mrs. Eddy's Letter, March 19, 1909 (Vol. 9, p. 173, Letters and Miscellany), adopted March 20, 1909 (Vol. 2, p. 45, Church By-Law Book)..... p. 351, c. 1
- 418 By-Law, "Literature in Reading Rooms," Mrs. Eddy's Letter, March 23, 1909 (Vol. 9, p. 175, Letters and Miscellany), adopted March 25, 1909 (Vol. 2, p. 46, Church By-Law Book)..... p. 351, c. 1-2
- 419 Repeal Art. XXIII, Sect. 10, and adopt Amendment, "No Interference," Mrs. Eddy's Letter, May 14, 1909 (Vol. 9, p. 179, Letters and Miscellany), adopted May 14, 1909 (Vol. 2, p. 46, Church By-Law Book)..... p. 351, c. 2
- 420 Repealed Art. IX, Sect. 2, and adopted Amendment, "Sudden Decease," Mrs. Eddy's Letter, May 22, 1909 (Vol. 9, p. 181, Letters and Miscellany), adopted May 22, 1909 (Vol. 2, p. 47, Church By-Law Book)..... p. 351, c. 2-3.
- 421 Letter, May 31, 1909, from Directors, requesting Mrs. Eddy's consent to repeal Art. XXXIII, with Indorsement by Mrs. Eddy (Vol. 6, p. 163, Letters and Miscellany) p. 351, c. 3.
- 422 Change of Article numbers in the 80th and 81st Editions voted upon, also the repeal of Art. XXXIII, Directors' Records, June 1, 1909..... p. 351, c. 3 to p. 352, c. 1
- 423 By-Law, "Class Teaching," Mrs. Eddy's Letter, June 23, 1909 (Vol. 9, p. 183, Letters and Miscellany)..... p. 352, c. 1
- 424 By-Law, Art. XXVII, Sect. 5, adopted, Directors' Records, June 25, 1909.... p. 352, c. 1
- 425 Proof Sheet of Manual indorsed by Mrs. Eddy, amendment adopted July 12, 1909 (Vol. 9, p. 185, Letters and Miscellany) p. 352, c. 2
- 426 Amendment, Art. I, Sect. 9, adopted, Directors' Records, July 12, 1909.... p. 352, c. 2
- 427 By-Law, "Teachers and Practitioners Offices," Mrs. Eddy's Letter, July 23, 1909 (Vol. 9, p. 187, Letters and Miscellany) p. 352, c. 2-3
- 428 By-Law, Art. XXIII, Sect. 11, adopted, Directors' Records, July 23, 1909.... p. 352, c. 3
- 429 By-Law, "Pastor Emeritus to be Consulted," Mrs. Eddy's Letter, July 28, 1909 (Vol. 9, p. 189, Letters and Miscellany) p. 352, c. 3 p. 352, c. 3 to p. 353, c. 1
- 430 By-Law, Art. XXII, Sect. 18, adopted, Directors' Records, July 28, 1909.... p. 352, c. 3 to p. 353, c. 1
- 431 Amendment, "Care of Pupils," Mrs. Eddy's Letter, Oct. 9, 1909 (Vol. 9, p. 201, Letters and Miscellany)..... p. 354, c. 3
- 432 Amendment, Art. XXVI, Sect. 2, adopted, Directors' Records, Oct. 13, 1909 p. 354, c. 3
- 433 Document, "Care of Pupils," with Mrs. Eddy's signature on the back (Vol. 9, p. 203, Letters and Miscellany). Adopted Oct. 13, 1909 (Directors' Minute Book)..... p. 354, c. 3 to p. 355, c. 1
- 434 Amendment, "A Single Field of Labor," Mrs. Eddy's Letter, Oct. 9, 1909 (Vol. 9, p. 197, Letters and Miscellany) p. 355, c. 1
- 435 Amendment, Art. XXVI, Sect. 7, adopted, Directors' Records, Oct. 13, 1909 p. 355, c. 1
- 436 Amendment, "Associations," Mrs. Eddy's Letter, Oct. 15, 1909 (Vol. 9, p. 205, Letters and Miscellany)..... p. 355, c. 1-2
- 437 Amendment, Art. XXVI, Sect. 6, adopted, Directors' Records, Oct. 18, 1909 p. 355, c. 2
- 438 Repeal of By-Law, "Change of Location," Mrs. Eddy's Letter, Oct. 18, 1909 (Vol. 9, p. 209, Letters and Miscellany) p. 355, c. 2
- 439 Repealed By-Law, Art. XXVI, Sect. 8, Directors' Records, Oct. 21, 1909.... p. 355, c. 2
- 440 Amendment, "Not Members of Mother Church," Mrs. Eddy's Letter, Jan. 24, 1910 (Vol. 9, p. 213, Letters and Miscellany) p. 355, c. 2-3
- 441 Amendment, Art. XXX, Sect. 8, adopted, Directors' Records, Jan. 27, 1910 p. 355, c. 3
- 442 Amendment, "Remuneration and Free Scholarship," Mrs. Eddy's Letter, March 10, 1910 (Vol. 9, p. 217, Letters and Miscellany)..... p. 355, c. 3

443	Amendment, Art. XXX, Sect. 4, adopted, Directors' Records, March 11, 1910	p. 355, c. 3
444	Amendment, "Pupils' Tuition," Mrs. Eddy's Letter, March 10, 1910 (Vol. 9, p. 219, Letters and Miscellany).....	p. 356, c. 1
445	Amendment, Art. XXVI, Sect. 5, adopted, Directors' Records, March 11, 1910	p. 356, c. 1
446	Amendment, "Church Organization Ample," Mrs. Eddy's Letter, March 14, 1910 (Vol. 9, p. 225, Letters and Miscellany)	p. 356, c. 1
447	Amendment, Art. VIII, Sect. 15, adopted, Directors' Records, March 14, 1910	p. 356, c. 2
448	Amendment, "In Branch Churches," Mrs. Eddy's Letter, March 21, 1910 (Vol. 9, p. 229, Letters and Miscellany)	p. 356, c. 2-3
449	Amendment, Art. XXXIII, Sect. 3, adopted, Directors' Records, March 22, 1910	p. 356, c. 3
450	Amendment, "No Malpractice," Mrs. Eddy's Letter, May 18, 1910 (Vol. 9, p. 243, Letters and Miscellany).....	p. 356, c. 3
451	Amendment, Art. VIII, Sect. 8, adopted, Directors' Records, May 20, 1910	p. 356, c. 3
452	Amendment, "Practitioners and Patients," Mrs. Eddy's Letter, Aug. 27, 1910 (Vol. 9, p. 247, Letters and Miscellany)	p. 357, c. 1
453	Amendment, Art. VIII, Sect. 22, adopted, Directors' Records, Aug. 29, 1910	p. 357, c. 1
454	Amendment, Art. VIII (Vol. 50, Letters and Miscellany), with Mrs. Eddy's signature on the back; also these words, "From McLellan Collection, adopted Aug. 29, 1910".....	p. 357, c. 2
456	By-Laws, enclosed in Mrs. Eddy's Letter, Feb. 5, 1903 (Vol. 3, p. 221, Letters and Miscellany).....	p. 358, c. 1
457	By-law, Art. I, Sect. 5, adopted (Vol. 3, p. 82, Directors' Records), Feb. 7, 1903	p. 358, c. 1-2
758	Amendment, "Case of Necessity," Mrs. Eddy's letter, Feb. 5, 1906 (Vol. 8, p. 203, Letters and Miscellany)....	p. 711, c. 2
759	By-Law, "Circuit Lecturer." Mrs. Eddy's letter, June 12, 1908 (Vol. 9, p. 87, Letters and Miscellany).....	p. 711, c. 2
760	By-Law, "No More Communion." Mrs. Eddy's letter, June 14, 1908 (Vol. 9, p. 93, Letters and Miscellany)	p. 711, c. 2-3
762	Provision by Mrs. Eddy to be placed in Art. V, Sect. 1 (Vol. 7, p. 65, Letters and Miscellany).....	p. 711, c. 3 to p. 712, c. 1
766	Extracts from Manual, 29th Edition, p. 98	p. 713, c. 2-3

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Proof Sheets of By-Laws, from Trustees' and Mr. Stewart's Files.....	p. 345, c. 1 to p. 349, c. 3
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Letters to Others—Mrs. Eddy to Mr. McLellan; Lewis C. Strang to Mr. McLellan; Adam H. Dickey to Mr. Stewart.	

PERIODICALS PUBLISHED BY THE CHRISTIAN SCIENCE PUBLISHING SOCIETY

35	Copy of The Christian Science Quarterly for April, May, and June, 1919, Vol. XXX, No. 1.....	p. 54, c. 3 to p. 55, c. 2
46	Inside of front cover page of The Christian Science Journal, January, 1918	p. 80, c. 1-2
64	Copy of Der Herold der Christian Science, June, 1919.....	p. 107, c. 1
65	Copy of Le Hérait de Christian Science, June, 1919.....	p. 107, c. 1
66	Copy of the Christian Science Sentinel, June 28, 1919.....	p. 107, c. 1
67	Copy of The Christian Science Monitor, June 28, 1919.....	p. 107, c. 1

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262	"Notice," p. 424, December, 1896.....	p. 311, c. 3
263	"Notice," by Mary Baker Eddy, p. 167, June, 1898.....	p. 311, c. 3 to p. 312, c. 1
465	Copy of Article prepared by Septimus J. Hanna, as editor, February, 1898..	p. 370, c. 2 to p. 371, c. 2
475	Article under heading, "Christian Science Practitioners," September, 1913	p. 376, c. 1-2
476	Article under heading, "Christian Science Practitioners," October, 1913	p. 376, c. 2
692	Statement, "Take Notice," by Mary Baker Eddy, October, 1904.....	p. 486, c. 3 to p. 487, c. 1
808	Article entitled, "The Mother Church," by Wm. R. Rathvon, January, 1911 (Vol. 27, p. 653).....	p. 758, c. 1
810	Article entitled, "To Whom it Concerns," by Mrs. Eddy, April, 1898 (Vol. 16, p. 1).....	p. 758, c. 2 to p. 759, c. 1

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Article entitled, "Special Announcement," April, 1919 (First published in Sentinel, Feb. 22, 1919).....	p. 131, c. 2

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163	Article entitled, "Hear O Israel: The Lord our God is One Lord" by Mary Baker Eddy (Vol. 7, p. 708), marked for identification.....	p. 256, c. 1-2
393	"New Prices for our Periodicals" (June 2, 1917).....	p. 336, c. 3
535	Article entitled, "Religion and Politics" (April 6, 1918).....	p. 394, c. 3 to p. 395, c. 1
809	Article entitled, "Now and Then," by Mary Baker Eddy (Vol. 5, p. 620)....	p. 758, c. 2

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Advertisement entitled, "The Manual of The Mother Church" (Jan. 5, 1913)	p. 82, c. 2-3
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47 Copy of Bulletin issued by Publishing Society, March 27, 1919	p. 83, c. 2-3
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51 Blank Application from a Church of Christ, Scientist, for a card in The Christian Science Journal	p. 85, c. 1-3
52 Printed Form Letter from The Publishing Society relative to the organization of a Society	p. 85, c. 3 to p. 86, c. 2
53* Printed Form of Application from a Society for a card in The Christian Science Journal	p. 86, c. 2 to p. 87, c. 1
60 Bill from Publishing Society to Miss Simon, for fifty cents, dated May 2, 1919, and stamped "Received Payment, May 8, 1919, The Christian Science Publishing Society," marked for identification	p. 97, c. 2 to p. 98, c. 1
61 Bill of The Christian Science Publishing Society to Miss Simon, for fifty cents, dated June 18, 1919, marked for identification	p. 98, c. 1
62 Application for Card in List of Practitioners in The Christian Science Journal, marked "Sample"	p. 93, c. 2-3
68 Article entitled, "The Church Manual," on page 27 of the pamphlet entitled "Fulfilling the Law," published by The Christian Science Publishing Society, marked for identification	p. 111, c. 2 to p. 112, c. 1
85 Copy of Communication by Trustees in regard to Federal and State Income Tax, dated May 14, 1918	p. 136, c. 1-2
561 Copy of pamphlet entitled "Purification," marked for identification, later admitted as Ex. 561	p. 404, c. 2 to p. 405, c. 2

The following exhibits marked for identification:

576 Passage in Book (Dummy Proof of "Purification")	p. 418, c. 3
685 Copy of pamphlet entitled "Answers to Questions Concerning Christian Science," by Edward A. Kimball, C.S.D.	p. 485, c. 1
686 Copy of pamphlet entitled "Christian Science Healing vs. Mental Suggestion," by Frederick Dixon	p. 485, c. 1
687 Copy of pamphlet entitled "Confidence and Supply," in French	p. 485, c. 1

* Duplicate number.

688 Copy of pamphlet entitled, "Christian Science: The Resurrection and the Life," in Dutch, by Clarence W. Chadwick, C.S.B.	p. 485, c. 2
689 Copy of Lecture—"Christian Science; or Deliverance from Evil," in Dutch, by Wm. P. McKenzie, C.S.B.	p. 485, c. 1
690 Copy of pamphlet entitled, "Christian Science: Its Results," in French, by Wm. R. Rathvon, C.S.B.	p. 485, c. 2

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71 Paper headed, "Monitor Deficit" covering years 1908 to 1918, inclusive	p. 126, c. 2 to p. 127, c. 1
91 Document from Harvey S. Chase & Co., dated March 31, 1917. June 15, 1917	p. 198, c. 1-2
92 Document from Harvey S. Chase & Co., Report upon Balance Sheets Audit as of March 31, 1918	p. 198, c. 1-2
93 Report from Harvey S. Chase & Co., upon an examination of the books and accounts of The Publishing Society for the year ended March 31, 1919. June 26, 1919	p. 198, c. 1-2 p. 200, c. 3 to p. 201, c. 3
Report read	
95 Card containing comparative circulation figures of The Monitor from 1912 to 1918, with memo attached dated November, 1918	p. 207, c. 1
96 Statement of "Cable Toll," marked for identification	p. 207, c. 2-3
97 Statement of Monitor local circulation, March, 1917, and March, 1918, marked for identification	p. 207, c. 3
113 Article of Organization of The Christian Science Publishing Society, April 2, 1897	p. 235, c. 1-2
114 Certificate of Secretary of Commonwealth of Massachusetts re Incorporation of The Christian Science Publishing Society, dated April 3, 1897	p. 235, c. 2 p. 651, c. 1 to p. 652, c. 3
729 Copy of Special Report Newsprint Contract, Nov. 18, 1918	p. 664, c. 1
730 Copy of Federal Trade Commission Prices, 1918	p. 664, c. 1
731 Contract with Canadian Export Co. Ltd., dated Jan. 5, 1918	p. 664, c. 2

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Profits of The C. S. Pub. Society for years 1913 to 1918	p. 189, c. 1
Commissions from the publication of Mrs. Eddy's Works for the first five months, also net profits for same period of contract	p. 199, c. 1

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246 "Memorandum of additions to complete Minutes of Meeting of Sept. 11, 1918"	p. 306, c. 2 to p. 307, c. 2 p. 410, c. 2 to p. 411, c. 3
541 Paragraph E, Section 7, Memorandum, February, 1916	p. 395, c. 2
616 Memorandum, Jan. 9, 1919, re Mr. Choate's conference with Trustees	p. 431, c. 1
638 Memorandum, "The Only Position," Feb. 1, 1919	p. 436, c. 2-3
694 Memorandum read in Directors' Meeting, April 24, 1918	p. 506, c. 3 to p. 507, c. 1
697 Pencil memorandum, Aug. 15, 1918	p. 508, c. 2
697a Typewritten copy of Ex. 697, Aug. 15, 1918	p. 508, c. 3

698	Pencil memorandum, Aug. 14, 1918..	p. 508, c. 3 to p. 509, c. 1
699	Memorandum, Aug. 21, 1918.....	p. 513, c. 3 to p. 514, c. 1
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36	Draft of Memorandum prepared by Mr. Eustace, Nov. 20, 1915.....	p. 61, c. 1 to p. 63, c. 2
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41	Memorandum "A, 1913".....	} Discussed on pp. 72 to 75 pp. 96 to 97
42	" " "B, 1915".....	
43	" " "C, 1916".....	
44	" " "D, 1919".....	
45	General Bulletin, 1919.....	
201	Paper bearing signature purporting to be that of James A. Neal.....	p. 281, c. 3
231	Memorandum of Notes by Wm. R. Rathvon taken at Joint Meeting, Mar. 11, 1919.....	p. 299, c. 2-3
245	Two and one-third typewritten sheets purporting to be dated Sept. 11, 1918. Attached sheet, dated Sept. 11, 1918, in the handwriting of Judge Clifford P. Smith.....	p. 304, c. 2 to p. 306, c. 2 p. 409, c. 2 to p. 410, c. 3
678	Memorandum drawn up as result of the conference of Counsel for Directors and Trustees on Feb. 1, 1919, marked for identification. (See Ex. 23)	p. 455, c. 1 to p. 456, c. 2
680	Memorandum as amended by Mr. Dickey in conference with Trustees on March 6, 1919 (see Ex. 683).....	p. 464, c. 1 to p. 469, c. 3 p. 509, c. 3 to p. 511, c. 3 p. 527, c. 3 to p. 529, c. 3
683	Copy of Memorandum with further amendments by Trustees, sent to Mr. Dickey's home, Mar. 6, 1919 (see Ex. 680).....	p. 475, c. 3 to p. 476, c. 1
714	Statement from Thomas W. Hatten, Nov. 26, 1918, to Mr. Eustace.....	p. 569, c. 3 to p. 570, c. 2
811	Article entitled "Loyalty to and Support of the Constituted Authorities," written and read by Mr. Eustace before the General Association of Teachers in Chicago, 1904.....	p. 759, c. 1 to p. 760, c. 2

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27	Notice of Dismissal, March 17, 1919	p. 37, c. 2 to p. 38, c. 1
49	Printed document headed, "Application for Advertisement in the List of Practitioners in the C. S. Journal"	p. 84, c. 1-2
332	Includes Section of Bulletin to be sent to Congressmen in Washington, D. C.	p. 322, c. 3
464	A paper accompanying letter entitled "A Gift to The Mother Church, and a Grant of Trusteeship," dated Jan. 15, 1898, by Mary Baker Eddy (Vol. 2, Letters and Miscellany).....	p. 370, c. 1-2
471	Document headed, "Regarding Christian Science," and beginning, "The matter first to be considered is, what do the initials C. S. mean?" marked for identification.....	p. 374, c. 3 to p. 375, c. 1
681	Document known as "The Judge Smith Memorandum," discussed by Directors and Trustees at March 10, 1919 conference.....	p. 470, c. 3 to p. 473, c. 1 p. 511, c. 3 to p. 512, c. 3

682	Document, based on Ex. 681, presented by Trustees at Directors' Meeting, March 11, 1919.....	p. 473, c. 1 to p. 475, c. 1
789	Copy of portion of Mr. Rowlands' application for membership in The Mother Church, dated June 6, 1905...	p. 731, c. 3 to p. 732, c. 1

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7 Books—1909 to 1914, and 1916. See Ex. 248, 249, 250, 251, 252, 253, 254.

4 Books—1915, also June 7, 1916 to June 2, 1919. See Ex. 197, 198, 199, 200. Church By-Law Books, Vols. I and II. See Ex. 119, 120.

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77	Letter, Mr. Johnson, Secretary, Board of Directors, to Trustees, dated Jan. 25, 1908.....	p. 132, c. 2	
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79	Copy of Letter, Mr. Frye to Trustee McKenzie, dated March 12, 1901.....	p. 133, c. 2	
80	Copy of Telegram, Neal, McKenzie to Mrs. Eddy, dated Feb. 2, 1898.....	p. 133, c. 3	
81	Copy of Telegram, Mr. Frye to Mr. McKenzie, dated Feb. 4, 1898.....	p. 133, c. 3	
82	Telegram, Mr. Frye to Mr. McKenzie, dated Feb. 2, 1898.....	p. 134, c. 1	
83	"Rules" from Mrs. Eddy, "For the Board of Trustees," enclosed in a letter from Mr. Frye to Mr. McKenzie, Feb. 4, 1898.....	p. 135, c. 2-3	
84	Copy of Letter, from one of Mrs. Eddy's secretaries to Trustees, dated Dec. 7, 1904.....	p. 135, c. 3 to p. 136, c. 1	
85	Copy of Communication by Trustees in regard to federal and state income tax, dated May 14, 1918.....	p. 136, c. 1-2	
86	Letter, G. S. Paine to Mr. Eustace, dated March 4, 1919.....	p. 158, c. 1 to p. 159, c. 1 and p. 164, c. 1-2	
87	Letter, Mr. Dittmore to Mr. Paul Harvey, dated Jan. 25, 1919.....	p. 159, c. 2 to p. 161, c. 1	
88	Letter, Mr. Harvey to Mr. Watts, dated Jan. 24, 1919.....	p. 161, c. 2	
	Two inclosures, Ex. A and Ex. B....	to p. 163, c. 3	
89	Original Letter, Mr. Watts to Directors, dated Jan. 28, 1919.....	p. 187, c. 3 to p. 188, c. 1	
90	Letter, Mr. Watts to Directors, dated Brookline, July 28, 1917, accepting election as Business Manager.....	p. 192, c. 1	
91	Document from Harvey S. Chase & Co., entitled, Christian Science Publishing Society, March 31, 1917, June 15, 1917.....	p. 198, c. 1-2	
92	Document from Harvey S. Chase & Co. Report upon Balance Sheets. Audit as of March 31, 1918.....	p. 198, c. 1-2	
93	Report from Harvey S. Chase & Co. upon an Examination of the Books and Accounts of the Publishing Society for the year ended March 31, 1919. June 26, 1919.....	p. 198, c. 1-2 p. 200, c. 3 to p. 201, c. 3	
94	Copy of Letter, Mr. Watts to Trustees, dated Feb. 17, 1919.....	p. 206, c. 2-3	
94a	Copy of Letter, Directors to Trustees, dated Jan. 28, 1919, attached to Ex. 94.....	p. 206, c. 2-3	
95	Card containing comparative circulation figures of The Christian Science Monitor from 1912 to 1918, with memorandum attached, dated November, 1918.....	p. 207, c. 1	
Ex. 96 to Ex. 105 inclusive are marked for identification.			
96	Statement of "Cable Tolls".....	p. 207, c. 2-3	
97	Statement of "Monitor local circulation, March, 1917, and March, 1918".....	p. 207, c. 3	

98	Letter, Miss Richardson to Mr. Dittemore, dated March 15, 1919.....	p. 209, c. 3	127	Record from First Members' Records, Vol. 2, p. 50, Dec. 28, 1895.....	p. 243, c. 1
99	Letter, Mrs. Hall to Mr. Dittemore, dated Feb. 19, 1919.....	p. 210, c. 1-2	128	Printed Copy of Church Manual of 1895, Fourth Edition, marked for identification.....	p. 246, c. 1-2
100	Statement by Myra B. Lord, dated March 5, 1919.....	p. 210, c. 3	129	Record of Special Meeting of First Members, March 10, 1899.....	p. 246, c. 3
101	Statement by John J. Flinn.....	p. 210, c. 3	130	Copy of Church Manual, Tenth Edition, marked for identification.....	p. 246, c. 3 to p. 247, c. 1
102	Statement by Paul S. Deland.....	p. 211, c. 1		Marked Ex. 130.....	p. 339, c. 3 and p. 340, c. 2
103	Statement by Walter R. Zahler.....	p. 211, c. 1	130a	Portion of Directors' Records, Vol. 3, p. 22, Feb. 20, 1901.....	p. 247, c. 1-2 also p. 248, c. 1
104	Statement by George H. Clark.....	p. 211, c. 1	131*	Copy of Church Manual, Twentieth Edition, marked for identification...	p. 247, c. 2
105	Statement by John K. Allen.....	p. 211, c. 2	131*	Letter from Mrs. Eddy, dated Feb. 18, 1901, with enclosure (Vol. 3, p. 113, Letters and Miscellany).....	p. 248, c. 1
106	Letter, Mr. Dickey to Directors, dated Jan. 11, 1919, re dismissing one trustee instead of demanding all to resign	p. 216, c. 3 to p. 217, c. 1	132	Minutes of Directors' Meeting, July 30, 1903.....	p. 248, c. 1-2
107	Record of Sept. 23, 1892, from Vol. 1 of Records of the First Members of The First Church of Christ, Scientist, in Boston, Mass.....	p. 230, c. 2 to p. 232, c. 1	133	Twenty-ninth Edition of Church Manual, marked for identification... Admitted as Ex. 133.....	p. 248, c. 2 p. 340, c. 2 to p. 342, c. 1
108	(Presumably Ex. 108, though not allotted.) Oct. 5, 1892 (Vol. 1, p. 11, First Members Records) "Rule 7" adopted; 59 members subscribe to Tenets at Mrs. Eddy's request.....	p. 231, c. 2 to p. 232, c. 2	134	Copy of Minutes of Meeting of Directors, Sept. 21, 1903, Vol. 3, p. 125, First Members' Records.....	p. 248, c. 2
109	Three volumes of Minutes of Meetings of First or Executive Members, Board of Directors, and Annual Church Meetings, signed by Wm. B. Johnson, clerk, are marked respectively, 109, 110, 111, for identification	p. 228, c. 3 to p. 233, c. 2	135	Thirtieth Edition of Church Manual, marked for identification.....	p. 248, c. 2
110	Record of meeting of May 4, 1895, p. 21 of Vol. II of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings, including two letters by Mrs. Eddy.....	p. 233, c. 3 to p. 235, c. 1	136	Copy of Record of Meeting of Directors, Oct. 15, 1906 (Vol. 1, p. 1, Church By-Law Book).....	p. 249, c. 1
111	Articles of Organization of Christian Science Publishing Society, April 2, 1897.....	p. 235, c. 1-2	137	Fifty-seventh Edition of Church Manual, marked for identification... Admitted as Ex. 137.....	p. 249, c. 1 p. 342, c. 1-2
112	Certificate of Secretary of the Commonwealth of Massachusetts, as to incorporation of Christian Science Publishing Society, dated April 3, 1897..	p. 235, c. 2	138	Records of Meetings appearing on pp. 1-34 and pp. 37-67 inclusive of the Church By-Law Book, Vol. 1.....	p. 249, c. 1 also p. 740, c. 1
113	Certified Copy of Deed, Christian Science Publishing Society to Mrs. Eddy, dated Jan. 21, 1898.....	p. 235, c. 2 to p. 236, c. 2	139	Record of Directors' Meeting of July 31, 1908 (Vol. 2, p. 1, of the Church By-Law Book).....	p. 249, c. 1-2
114	Ex. 116 to Ex. 120 are marked for identification.		140	Seventy-third Edition of Church Manual, marked for identification... Admitted as Ex. 140.....	p. 249, c. 2 p. 342, c. 2
115	Directors' Record Books; one beginning Sept. 3, 1892, to Dec. 30, 1903....	p. 236, c. 2 to p. 237, c. 1	141	Record of Meetings of Board of Directors, pp. 1-34 and pp. 37-59 inclusive of Vol. 2 of Church By-Law Book.....	p. 249, c. 2 also p. 740, c. 1
116	Directors' Record Book, beginning Jan. 1, 1904, to March 2, 1907.....	p. 236, c. 3 to p. 237, c. 1	142	Portion of Record, p. 106 of Vol. 2 of First Members' Records, March 16, 1896.....	p. 250, c. 1
117	Directors' Record Book, beginning March 4, 1907, to May 28, 1909.....	p. 237, c. 1	143	Record of Meeting, Jan. 18, 1898, p. 178 of Vol. 2, Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 250, c. 1-2
118	Church By-Laws, Vol. 1.....	p. 238, c. 2-3	144	Copy of Document re Church By-Law, (Vol. 7, p. 93, Letters and Miscellany)	p. 250, c. 2-3
119	Church By-Laws, Vol. 2.....	p. 238, c. 3	145	Copy of Telegram sent by Mrs. Eddy, (p. 151, Vol. 10, Letters and Miscellany).....	p. 251, c. 1
120	Copy of Letter, Mr. Frye to Mr. Johnson, dated Feb. 10, 1898, re church By-law.....	p. 240, c. 1-3 to p. 241, c. 1	146	Copy of Records of the First Members, Vol. 2, p. 183, Feb. 10, 1898.....	p. 251, c. 1-2
121	Copy of Letter, Mr. Frye to Mr. Johnson, dated July 13, 1899.....	p. 240, c. 3 to p. 241, c. 1	147	Document "By-Law" corrected by Mrs. Eddy (p. 171, Vol. 7, Letters and Miscellany).....	p. 251, c. 2
122	Record of Meeting of Feb. 10, 1898, appearing on p. 183 of Vol. 2, Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 241, c. 1-2	148	Copy of Record of Minutes of the Directors' Meeting, Vol. 3, p. 122, July 30, 1903 (see Ex. 111).....	p. 251, c. 3
123	Record of Meeting of Aug. 25, 1898, p. 200 of Vol. 2, of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 241, c. 2-3	149	Record of Meeting, July 15, 1903, Vol. 3, p. 120, Records of First or Executive Members, Board of Directors and Annual Church Meetings...	p. 252, c. 2
124	Record of Meeting of July 17, 1899, p. 258 of Vol. 2, of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 241, c. 3 and p. 251, c. 2	150	Meeting of Directors, March 17, 1903, Vol. 3, p. 88, Records of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 252, c. 2-3
125	Record of Meeting of Jan. 10, 1901, p. 313 of Vol. 2, of Minutes of Meetings of First or Executive Members, Board of Directors and Annual Church Meetings.....	p. 242, c. 1-2	151	Portion of Record Directors' Meeting, July 8, 1908, Vol. 3, p. 102 (see Ex. 118).....	p. 252, c. 3

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152	Letter, Mrs. Eddy to Directors, dated July 1, 1908, re correcting Manual, (Vol. 6, p. 123, Letters and Miscellany)	p. 253, c. 2-3	177	Portion Directors' Records, June 11, 1906 (Vol. 3, p. 269).....	p. 259, c. 2
153	Letter, Mrs. Eddy to Directors, dated July 1, 1908, re repealing paragraph of by-law, Art. VI, Sect. 1 (Vol. 9, p. 107, Letters and Miscellany).....	p. 253, c. 3	178	Portion of Record Directors' Meeting, June 10, 1907 (Vol. 3, p. 302)....	p. 259, c. 3
154	Letter, Mrs. Eddy to Directors, dated July 3, 1908, re adoption By-Law, (Vol. 9, p. 115, Letters and Miscellany)	p. 253, c. 3 to p. 254, c. 1	179	Portion of Record Directors' Meeting, June 15, 1908 (Vol. 3, p. 324)....	p. 259, c. 3
155	Document (p. 257, Vol. 7, Letters and Miscellany), Church By-Law, with Letter from Mrs. Eddy to Clerk, dated Oct. 4, 1901.....	p. 254, c. 1-2	180	Letter, Directors to Trustees, dated June 21, 1902, from Directors' Letter Press Copy Book, p. 294.....	p. 261, c. 1
156*	Extract of Record of Directors' Meeting of Oct. 4, 1901, Vol. 3, p. 45.....	p. 254, c. 2-3	181	Copy of Letter, Mr. Johnson to Mr. Hatten, Secretary of Board of Trustees, dated July 5, 1903. From Directors' Letter Press Copy Book, p. 147	p. 261, c. 1-2
156*	Extract Directors' Record of Meeting, Nov. 14, 1901, Vol. 3, p. 48.....	p. 254, c. 2	182	Copy of Letter, Mr. Johnson to Christian Science Publishing Society, dated Jan. 8, 1908, re election of Mr. Ogden as Business Manager, Directors' Letter Press Copy Book.....	p. 261, c. 2
157	Extract of Record of Directors' Meeting of May 15, 1902, Vol. 3, p. 57.....	p. 254, c. 3	183	Copy of Letter, Trustees to Directors, dated Dec. 29, 1907.....	p. 261, c. 2-3
158	Copy of Letter, Mr. Frye to Mr. Johnson, dated Aug. 22, 1898, re Church By-Law (Vol. 7, p. 111, Letters and Miscellany)	p. 255, c. 1-2	184	Letter, Directors to Trustees, dated June 8, 1914.....	p. 262, c. 2-3 p. 262, c. 3 to p. 263, c. 1
159	Extract of Record of Meeting First Members, Aug. 22, 1898, from Vol. 2, p. 199, First Members' Records.....	p. 255, c. 2	185	Portion of Record Directors' Meeting, May 30, 1910, p. 38 (see Ex. 249)	p. 263, c. 1
160	Copy of Letter, Mrs. Eddy to Mr. McKenzie, dated Aug. 22, 1898, from unbound volume.....	p. 255, c. 2	186	Portion of Record Directors' Meeting, May 29, 1911, p. 31 (see Ex. 250)	p. 263, c. 1-2
161	Letter, Mrs. Eddy to Christian Science Board, dated June 25, 1902 (Vol. 3, p. 193, Letters and Miscellany) ..	p. 256, c. 1	187	Portion of Record Directors' Meeting, June 3, 1912, p. 26 (see Ex. 251)	p. 263, c. 2
162	Letter, Mrs. Eddy to Directors, dated June 27, 1905, taken from Vol. 5, p. 27, Letters and Miscellany.....	p. 256, c. 1	188	Portion of Record Directors' Meeting, June 2, 1913, p. 35 (see Ex. 252)	p. 263, c. 3
163	Article on p. 708 of Vol. 7 of Christian Science Sentinel.....	p. 256, c. 1-2	189	Portion of Record Directors' Meeting, June 8, 1914, p. 51 (see Ex. 253)	p. 263, c. 3
164	Letter, Mrs. Eddy to Directors, received July 28, 1908 (Vol. 6, p. 131, Letters and Miscellany) (see Ex. 691)	p. 256, c. 2	190	Portion of Record Directors' Meeting, June 7, 1915, p. 42 (see Ex. 197)	p. 263, c. 3
165	Letter, Mrs. Eddy to Directors, dated Aug. 15, 1908, re amendment Art. XXXVI, Sect. 2, "Seventy-third Edition the Authority".....	p. 256, c. 3 to p. 257, c. 1	191	Portion of Record Directors' Meeting, June 5, 1916, p. 79 (see Ex. 254)	p. 264, c. 1
166	Directors' Records (Church By-Laws, Vol. 2, p. 37), Aug. 28, 1908.....	p. 257, c. 1	192	Portion of Record Directors' Meeting, June 4, 1917, p. 222 (see Ex. 198)	p. 264, c. 1-2
167	Copy of Letter, Mrs. Eddy to Directors, dated June 17, 1901 (Vol. 3, p. 127, Letters and Miscellany).....	p. 257, c. 1-2	193	Portion of Record Directors' Meeting, June 3, 1918 (see Ex. 199).....	p. 264, c. 2
168	Copy of Letter, Mrs. Eddy to Directors, dated Oct. 12, 1903 (Vol. 4, p. 77, Letters and Miscellany).....	p. 257, c. 2	194	Letter, Mrs. Eddy to Directors, dated Aug. 8, 1908 (Vol. 9, p. 135, Letters and Miscellany)	p. 264, c. 3
169	This number not used.		195	Portion of Record Directors' Meeting, Sept. 4, 1908 (Vol. 2, p. 38, Church By-Law Book).....	p. 264, c. 3
170	Copy of Letter, Mrs. Eddy to Directors, dated Oct. 25, 1903 (Vol. 4, p. 83, Letters and Miscellany).....	p. 257, c. 2-3	196	Portion of Record Directors' Meeting, July 6, 1908 (Vol. 1, p. 62, Church By-Law Book).....	p. 265, c. 1
171	Copy of Letter, Mrs. Eddy to Directors, dated May 16, 1905 (Vol. 4, p. 213, Letters and Miscellany).....	p. 257, c. 3		Ex. 197 to Ex. 201 inclusive marked for identification.	
172	Portion of Letter, Mrs. Eddy to The First Church of Christ, Scientist, dated July 17, 1899 (Vol. 3, p. 19, Letters and Miscellany).....	p. 258, c. 1	197	Volume of Minutes of Meetings of Directors, beginning Jan. 6, 1915, and ending Dec. 29, 1915.....	p. 268, c. 3 to p. 269, c. 1
173	Records, Meeting of Directors, June 16, 1902 (Vol. 3, First or Executive Members, Board of Directors and Annual Church Meetings).....	p. 258, c. 1-2	198	Records of Directors' Meetings, from June 7, 1916, through June 4, 1917..	p. 273, c. 1-2
174	Records, Meeting of Directors, June 29, 1903 (Vol. 3, First or Executive Members, Board of Directors and Annual Church Meetings).....	p. 258, c. 2	199	Records of Directors' Meetings, from June 6, 1917, through June 3, 1918...	p. 273, c. 2
175	Records, Meeting of Directors, June 13, 1904 (Vol. 3, First or Executive Members, Board of Directors and Annual Church Meetings).....	p. 259, c. 1-2	200	Records of Directors' Meetings, June 4, 1918, through June 2, 1919.....	p. 273, c. 2 and p. 274, c. 1
176	Portion Directors' Records, June 12, 1905 (Vol. 3, p. 218).....	p. 259, c. 2	201	Paper bearing signature purporting to be that of James A. Neal.....	p. 281, c. 3
			202	Portion of Record Directors' Meeting, March 6, 1919.....	p. 287, c. 2
			203	Original Letter, Mr. Dittmore to Directors, dated March 13, 1919.....	p. 287, c. 3 and p. 297, c. 1-2
			204	Portion of Record Directors' Meeting, Dec. 22, 1918.....	p. 288, c. 2-3
			205	Extract from Directors' Record, Joint Meeting, Feb. 3, 1919.....	p. 290, c. 1
			206	Extracts from Record Directors' Meeting, Feb. 5, 1919.....	p. 290, c. 1-2
			206a	Extracts from Record Directors' Meeting, Feb. 6, 1919.....	p. 290, c. 2
			207	Extract from Record Directors' Meeting, Feb. 7, 1919.....	p. 290, c. 2
			208	Extracts from Directors' Record, Joint Meeting, Feb. 10, 1919.....	p. 290, c. 2-3
			209	Extract from Record Directors' Meeting, Feb. 17, 1919.....	p. 290, c. 3 to p. 291, c. 1

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210	Extracts from Record Directors' Meeting, Feb. 18, 1919, re situation existing between Directors and Trustees	p. 291, c. 1 and p. 292, c. 1-2	244	Copy of Letter, Directors to Mrs. Longyear, dated Nov. 6, 1917.....	p. 303, c. 1-2
211	Copy of Letter, Mr. Rathvon to Directors, dated Feb. 18, 1919, re existing situation.....	p. 291, c. 1-3	245	Excerpts from Paper produced by Mr. Dane, dated Sept. 11, 1918, in typewriting, attached to which is a paper in manuscript, dated Sept. 11, 1918..	p. 305, c. 3 to p. 306, c. 2
212	Portion of Record Directors' Meeting, Feb. 20, 1919.....	p. 292, c. 2	246	Document, "Memorandum of additions to complete Minutes of the Meeting of Sept. 11, 1918".....	p. 306, c. 2-3
213	Portion of Record Directors' Meeting, Feb. 21, 1919.....	p. 292, c. 2	247	Letter Mr. Dickey to Directors, dated Jan. 14, 1919, re question of bringing charges against Trustees individually for infraction of By-Laws.....	p. 308, c. 2 to p. 309, c. 1
214	Portion of Directors' Record, Joint Meeting, Feb. 24, 1919.....	p. 292, c. 2-3	FOLLOWING are seven books of the Minutes of Directors' Meetings, covering period from 1909 to 1916.		
215	Portion of Record Directors' Meeting, Feb. 25, 1919.....	p. 292, c. 3 to p. 293, c. 1 also p. 217, c. 1-2	Ex. 248 to Ex. 254 are marked for identification.		
216	Portion of Record Directors' Meeting, Feb. 26, 1919.....	p. 293, c. 1 also p. 217, c. 2-3	248	Minutes of Meetings, May 31, 1909, to and including those of Dec. 30, 1909	p. 309, c. 2-3
217	Portion of Record Directors' Meeting, Feb. 27, 1919.....	p. 293, c. 1-2 also p. 217, c. 3	249	Minutes of Meetings, Jan. 1, 1910, to Dec. 30, 1910, both dates inclusive..	p. 309, c. 3
218	Portion of Record Directors' Meeting, March 3, 1919.....	p. 293, c. 2-3 also p. 217, c. 3	250	Minutes of Meetings, Jan. 2, 1911, to Dec. 29, 1911, both dates inclusive...	p. 309, c. 3
219	Portion of Record Directors' Meeting, March 5, 1919.....	p. 293, c. 3	251	Minutes of Meetings, Jan. 4, 1912, to Dec. 26, 1912, both dates inclusive...	p. 309, c. 3
220	Copy of Letter, Mr. Dittmore to Directors, dated April 25, 1918.....	p. 294, c. 1 to p. 295, c. 3	252	Minutes of Meetings, Jan. 1, 1913, to Dec. 31, 1913, both dates inclusive...	p. 309, c. 3
221	Extracts from Record Directors' Meeting, March 6, 1919 (see Ex. 202)	p. 295, c. 3 to p. 296, c. 1 also p. 217, c. 3 to p. 218, c. 1 and p. 449, c. 1-2	253	Minutes of Meetings, Jan. 7, 1914, to Dec. 31, 1914, both dates inclusive...	p. 309, c. 3
222	Excerpt from Record Directors' Meeting, March 6, 1919.....	p. 296, c. 1	254	Minutes of Meetings, Jan. 3, 1916, to June 5, 1916, both dates inclusive...	p. 309, c. 3
223	Excerpt from Record Directors' Meeting, March 10, 1919 (see Ex. 671)	p. 296, c. 1	255	Extracts from Trustees' Minute Book, pp. 3, 7, 19.....	p. 310, c. 2 to p. 311, c. 1
224	Portion of Record Directors' Meeting, March 11, 1919 (see Ex. 672).....	p. 296, c. 2 also p. 236, c. 2-3	256	Extracts from Record Trustees' Meeting, Feb. 4, 1898.....	p. 311, c. 1
225	Portion of Record Directors' Meeting, March 13, 1919.....	p. 296, c. 2-3 also p. 449, c. 3	257	Extracts from Record Trustees' Meeting, Feb. 11, 1898.....	p. 311, c. 1-2
226	Letter, Mr. Dittmore to Directors, dated March 13, 1919.....	p. 296, c. 3 to p. 297, c. 1	258	Extract from Record Trustees' Meeting, April 15, 1898.....	p. 311, c. 2
227	Portion of Record Directors' Meeting, March 13, 1919.....	p. 297, c. 2	259	Extract from Record Trustees' Meeting, May 20, 1898.....	p. 311, c. 2
228	Portion of Record Directors' Meeting, March 17, 1919.....	p. 297, c. 2 to p. 298, c. 3	260	Extract from Record Trustees' Meeting, June 8, 1898.....	p. 311, c. 3
229	Extract from Record Directors' Meeting, March 18, 1919.....	p. 298, c. 3	261	Extract from Record Trustees' Meeting, July 8, 1898.....	p. 311, c. 3
230	This number not used.		262	"Notice" on page 424 of Journal for December, 1896.....	p. 311, c. 3
231	Memorandum of Notes by Wm. R. Rathvon, taken at Meeting between Trustees and Directors, March 11, 1919.....	p. 299, c. 2-3	263	"Notice" by Mrs. Eddy on page 167 of Journal for June, 1898.....	p. 311, c. 3 to p. 312, c. 1
232	Extracts from Record Directors' Meeting, March 19, 1919.....	p. 299, c. 1 to p. 300, c. 1 also p. 178, c. 3	264	Extract from Record Trustees' Meeting, Aug. 19, 1898.....	p. 312, c. 1
233	Extract from Record Directors' Meeting, March 22, 1919.....	p. 300, c. 2	265	Extract from Record Trustees' Meeting, Nov. 21, 1899.....	p. 312, c. 2
234	Portion of Record Directors' Meeting, March 24, 1919.....	p. 300, c. 2-3	266	Extract from Record Trustees' Meeting, Aug. 14, 1900.....	p. 312, c. 2
235	Portions of Record Directors' Meeting, March 25, 1919.....	p. 300, c. 3 to p. 301, c. 1	267	Portion of Trustees' Record, Joint Meeting, Nov. 22, 1900.....	p. 312, c. 2-3
236	Portions of Record Directors' Meeting, March 26, 1919.....	p. 301, c. 1	268	Portion of Record Trustees' Meeting, March 13, 1901.....	p. 312, c. 3
237	Portion of Record Directors' Meeting, March 29, 1919.....	p. 301, c. 1	269	Portion of Trustees' Record, Joint Meeting, April 8, 1901.....	p. 312, c. 3
238	Portion of Record Directors' Meeting, April 7, 1919.....	p. 301, c. 1	270	Portion of Record Trustees' Meeting, Sept. 9, 1901.....	p. 312, c. 3
239	Portion of Record Directors' Meeting, April 9, 1919.....	p. 301, c. 3	271	Portion of Record Trustees' Meeting, Sept. 17, 1901.....	p. 312, c. 3
240	Portion of Record Directors' Meeting, April 14, 1919.....	p. 301, c. 3 to p. 302, c. 1	272	Portion of Trustees' Record, Joint Meeting, March 18, 1902.....	p. 312, c. 3 to p. 313, c. 1
241	Portion of Record Directors' Meeting, April 22, 1919.....	p. 302, c. 1	273	Portion of Trustees' Record, Joint Meeting, April 22, 1902.....	p. 313, c. 1
242	Portion of Record Directors' Meeting, May 5, 1919.....	p. 302, c. 1	274	Portion of Record Trustees' Joint Meeting, June 17, 1902.....	p. 313, c. 1
243	Letter Mr. Abbott to Judge Smith, dated April 22, 1919.....	p. 302, c. 2-3	275	Portion of Trustees' Record, Joint Meeting, June 21, 1902.....	p. 313, c. 1-2
243a	Copy of proposed Letter, dated April 21, 1919, headed "The First Church of Christ, Scientist, Office of The Christian Science Board of Directors"....	p. 302, c. 3 to p. 303, c. 1	276	Portion of Record Trustees' Meeting, Feb. 9, 1903 (1904?).....	p. 313, c. 2
			277	Portion of Record Trustees' Meeting, March 15, 1904.....	p. 313, c. 2
			278	Portion of Record Trustees' Meeting, April 11, 1904.....	p. 313, c. 2

279	Portion of Record Trustees' Meeting, Nov. 3, 1904.....	p. 313, c. 2-3	318	Extract of Trustees' Record, Joint Meeting, Feb. 15, 1916.....	p. 317, c. 2
280	Portion of Record Trustees' Meeting, Nov. 4, 1904.....	p. 313, c. 3	319	Extract of Trustees' Record, Joint Meeting, Feb. 24, 1916.....	p. 317, c. 3
281	Portion of Record Trustees' Meeting, Nov. 5, 1904.....	p. 313, c. 3	320	Extract of Trustees' Record, Joint Meeting, Feb. 28, 1916.....	p. 318, c. 2
282	Portion of Record Trustees' Meeting, Dec. 6, 1904.....	p. 313, c. 3	321	Extract of Trustees' Record, Joint Meeting, March 13, 1916.....	p. 318, c. 2
283	Portion of Record Trustees' Meeting, April 25, 1905.....	p. 313, c. 3	322	Extract of Trustees' Record, Joint Meeting, March 20, 1916.....	p. 318, c. 2
284	Portion of Record Trustees' Meeting, March 5, 1902.....	p. 314, c. 1	323	Extract of Trustees' Record, Joint Meeting, March 27, 1916.....	p. 318, c. 2
285	Portion of Record Trustees' Meeting, July 8, 1902.....	p. 314, c. 1	324	Copy of Letter to Directors, (said to have been prepared by Mr. McKenzie) dated Feb. 15, 1916 (see Ex. *718 and Ex. 719).....	p. 317, c. 2 to p. 319, c. 3
286	Portion of Record Trustees' Meeting, July 23, 1902.....	p. 314, c. 1	325	Extract of Trustees' Record, Joint Meeting, April 3, 1916.....	p. 319, c. 3
287	Portion of Record Trustees' Meeting, Nov. 12, 1902.....	p. 314, c. 1	326	Portion of Trustees' Record Meeting, June 21, 1916.....	p. 320, c. 3
288	Portion of Record Trustees' Meeting, Nov. 10, 1903.....	p. 314, c. 1	327	Portions of Record Trustees' Meeting, March 26, 1917.....	p. 320, c. 3 to p. 321, c. 1
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430	Extract from Record Directors' Meeting, July 28, 1909.....	p. 352, c. 3 to p. 353, c. 1	466	Copy Mrs. Eddy's letter, dated Jan. 22, 1898, re conveying Journal to The Mother Church, and Real Estate Quitclaimed to Mrs. Eddy by Christian Science Publishing Society to The Mother Church (Vol. 39, unbound, Letters and Miscellany).....	p. 372, c. 1-2
431	Copy of Letter, Mrs. Eddy to Directors, dated Oct. 9, 1909 (Vol. 9, p. 201, Letters and Miscellany).....	p. 354, c. 3	467	Copy Mrs. Eddy's letter, dated Jan. 18, 1898 (Vol. 39, Letters and Miscellany)	p. 372, c. 2-3
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521a	Extract from Record Directors' Meeting, Dec. 28, 1917.....	p. 393, c. 1	559	Extract from Record Directors' Meeting, Aug. 21, 1918.....	p. 404, c. 1-2
522	Extract from Record Directors' Meeting, Jan. 2, 1918.....	p. 393, c. 1	560	Extract from Directors' Record, Joint Meeting, Sept. 4, 1918.....	p. 404, c. 2
523	Extract from Directors' Record, Joint Meeting, Jan. 9, 1918.....	p. 393, c. 1	561	Copy of Pamphlet "Purification"....	p. 404, c. 2 to p. 405, c. 2
524	Extract from Record Directors' Meeting, Jan. 11, 1918.....	p. 393, c. 2	562	Letter, Directors to Trustees, dated Aug. 28, 1918.....	p. 405, c. 2
525	Extract from Record Directors' Meeting, Jan. 16, 1918.....	p. 393, c. 2	563	Portion of Record Directors' Meeting, Sept. 9, 1918.....	p. 405, c. 3
526	Extract from Record Directors' Meeting, Jan. 18, 1918.....	p. 393, c. 2	564	Letter, Trustees to Directors, dated Sept. 6, 1918.....	p. 405, c. 3
			565	Portion of Directors' Record, Joint Meeting, Sept. 4, 1918.....	p. 405, c. 3

566	Copy of Letter, John R. Watts, Business Manager, to Chas. E. Jarvis, Clerk, dated Sept. 9, 1918.....	p. 407, c. 2	599	Portion of Record Directors' Meeting, Dec. 19, 1918.....	p. 424, c. 1
567	Copy of Letter, Directors to Trustees, dated Sept. 9, 1918.....	p. 407, c. 2-3	600	Portion of Record Directors' Meeting, Dec. 20, 1918 (see Ex. 12 and Ex. 13)	p. 424, c. 1-2
568	Extracts from Record Directors' Meeting, Sept. 9, 1918.....	p. 407, c. 3 to p. 408, c. 1	601	Letter, Directors to Mr. Dixon, dated Sept. 17, 1918.....	p. 424, c. 2-3
569	Copy of Letter, Trustees to Directors dated Sept. 9, 1918.....	p. 408, c. 2	602	Correspondence between Directors and Mr. Dixon, June, 1914, marked for identification.....	p. 424, c. 3 to p. 425, c. 1
570	Copy of Letter, Directors to John R. Watts, Business Manager, dated Sept. 10, 1918.....	p. 408, c. 2-3	603	Extract from Record Trustees' Meeting, June 8, 1914.....	p. 425, c. 2
571	Extract of Record Directors' Meeting, Sept. 10, 1918.....	p. 408, c. 3	604	Portion of Record Directors' Meeting, Dec. 22, 1918.....	p. 426, c. 2
572	Letter Mr. Dixon to Directors, dated Sept. 8, 1918, marked for identification, later read and admitted as Ex. 572	p. 408, c. 3 to p. 409, c. 2 p. 412, c. 3 to p. 416, c. 1 p. 419, c. 3 to p. 420, c. 1	605	Extract from Record Directors' Meeting, Dec. 22, 1918.....	p. 429, c. 3
573	Directors' Record Joint Meeting, Sept. 11, 1918.....	p. 409, c. 2	606	Extract from Record Directors' Meeting, Dec. 23, 1918.....	p. 429, c. 3
574	Extract from Directors' Record, Sept. 12, 1918 (see Ex. 245 and Ex. 246)	p. 409, c. 3 to p. 411, c. 3	607	Extract from Record Directors' Meeting, Dec. 24, 1918.....	p. 429, c. 3 to p. 430, c. 1
575	Portion of Record Directors' Meeting, Oct. 7, 1918.....	p. 417, c. 1	608	Extract from Record Directors' Meeting, Dec. 26, 1918.....	p. 430, c. 1
576	Passage in Book (Dummy Proof of "Purification"), marked for identification.....	p. 418, c. 3	609	Extract from Record Directors' Meeting, Dec. 30, 1918.....	p. 430, c. 1
577	Extract from Record Directors' Meeting, Sept. 18, 1918.....	p. 419, c. 2	610	Extract from Record Directors' Meeting, Dec. 30, 1918.....	p. 430, c. 1-2
578	Extract from Record Directors' Meeting, Oct. 1, 1918 (see Ex. 4 and 4a).....	p. 419, c. 2 also p. 203, c. 3 to p. 204, c. 1 and p. 411, c. 3 to p. 412, c. 3	611	Extract from Record Directors' Meeting, Jan. 2, 1919.....	p. 430, c. 2
579	Extract from Record Directors' Meeting, Oct. 7, 1918.....	p. 420, c. 1	612	Extract from Record Directors' Meeting, Jan. 2, 1919.....	p. 430, c. 2
580	Extract from Record Directors' Meeting, Oct. 8, 1918 (see Ex. 5).....	p. 420, c. 2	613	Extract from Record Directors' Meeting, Jan. 3, 1919 (see Ex. 18).....	p. 430, c. 2
581	Extract from Record Directors' Meeting, Oct. 10, 1918.....	p. 420, c. 2 also p. 282, c. 1	614	Extract from Record Directors' Meeting, Jan. 7, 1919.....	p. 430, c. 2-3
582	Extract from Record Directors' Meeting, Oct. 14, 1918.....	p. 420, c. 2	614a	Extract from Record Directors' Meeting, Jan. 8, 1919.....	p. 430, c. 3
583	Extract from Record Directors' Meeting, Oct. 15, 1918.....	p. 420, c. 2	615	Extract from Record Directors' Meeting, Jan. 9, 1919.....	p. 430, c. 3
584	Extract from Record Directors' Meeting, Oct. 17, 1918.....	p. 421, c. 2	616	Memorandum prepared by Mr. Dittemore, Jan. 9, 1919.....	p. 431, c. 1
585	Extract from Record Directors' Meeting, Oct. 22, 1918.....	p. 421, c. 2	617	Extract from Record Directors' Meeting, Jan. 10, 1919.....	p. 431, c. 2
586	Extract from Record Directors' Meeting, Oct. 29, 1918.....	p. 421, c. 2-3	618	Extract from Record Directors' Meeting, Jan. 11, 1919.....	p. 431, c. 2 p. 431, c. 2 also p. 203, c. 3
587	Extract from Record Directors' Meeting, Oct. 31, 1918.....	p. 421, c. 3	619	Extract from Record Directors' Meeting, Jan. 13, 1919 (see Ex. 106).....	p. 431, c. 3
588	Extract from Record Directors' Meeting, Nov. 4, 1918.....	p. 421, c. 3	620	Extract from Record Directors' Meeting, Jan. 14, 1919.....	p. 431, c. 3
589	Extract from Record Directors' Meeting, Nov. 13, 1918.....	p. 422, c. 1	621	This number not used.	
590	Extract from Record Directors' Meeting, Nov. 14, 1918.....	p. 422, c. 1	622	Extract from Record Directors' Meeting, Jan. 16, 1919.....	p. 431, c. 3
591*	Extract from Record Directors' Meeting, Nov. 18, 1918.....	p. 422, c. 2	623	Extract from Record Directors' Meeting, Jan. 17, 1919.....	p. 431, c. 3 to p. 432, c. 1
591*	Extract from Record Directors' Meeting, Nov. 19, 1918.....	p. 422, c. 2	624	Extract from Record Directors' Meeting, Jan. 20, 1919.....	p. 432, c. 1-2
592	Extract from Record Directors' Meeting, Nov. 26, 1918.....	p. 422, c. 2-3	625	Extract from Record Directors' Meeting, Jan. 21, 1919.....	p. 432, c. 2
593	Portion of Record Directors' Meeting, Dec. 2, 1918.....	p. 422, c. 3	626	Portion of Record Directors' Meeting, Jan. 21, 1919.....	p. 432, c. 2
594	Portion of Record Directors' Meeting, Dec. 3, 1918.....	p. 422, c. 3 to p. 423, c. 1	627	Portion of Record Directors' Meeting, Jan. 22, 1919.....	p. 432, c. 3 to p. 433, c. 1
595	Portion of Record Directors' Meeting, Dec. 5, 1918.....	p. 423, c. 1	628	Portion of Record Directors' Meeting, Jan. 23, 1919.....	p. 433, c. 1-2
596*	Portion of Record Directors' Meeting, Dec. 11, 1918.....	p. 423, c. 1	629	Extracts from Record Directors' Meeting, Jan. 23, 1919.....	p. 434, c. 1-2
596*	Portion of Record Directors' Meeting, Dec. 17, 1918.....	p. 423, c. 3	630	Extracts from Record Directors' Meeting, Jan. 24, 1919.....	p. 434, c. 2 to p. 435, c. 1
597	Portion of Record Directors' Meeting, Dec. 18, 1918 (see Ex. 10).....	p. 423, c. 3	631	Extracts from Record Directors' Meeting, Jan. 25, 1919.....	p. 435, c. 1
598	Portion of Record Directors' Meeting, Dec. 19, 1918 (see Ex. 8).....	p. 424, c. 1	632	Extracts from Record Directors' Meeting, Jan. 27, 1919.....	p. 435, c. 1-2
			633	Extracts from Record Directors' Meeting, Jan. 28, 1919.....	p. 435, c. 2-3
			634	Extract from Record Directors' Meeting, Jan. 29, 1919.....	p. 435, c. 3 to p. 436, c. 1
			635	Extract from Record Directors' Meeting, Jan. 30, 1919.....	p. 436, c. 1
			636	Extract from Record Directors' Meeting, Jan. 31, 1919.....	p. 436, c. 2
			637	Extract from Record Directors' Meeting, Feb. 1, 1919 (see Ex. 23).....	p. 436, c. 2
			638	Memorandum prepared by Mr. Dittemore, dated Feb. 1, 1919.....	p. 436, c. 2-3

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639	Extract from Record Directors' Meeting, Feb. 3, 1919.....	p. 436, c. 3	675	Letter, Directors to Mrs. Longyear, dated March 6, 1919.....	p. 450, c. 1-2
640	Letter, Mr. Dittmore to Directors, dated Feb. 3, 1919.....	p. 437, c. 1-2	676	Portion of Record Directors' Meeting, March 18, 1919.....	p. 450, c. 2
641	Portion of Directors' Record, Joint Meeting, Feb. 3, 1919 (see Ex. 24)....	p. 437, c. 3	677	Letter, Mr. Dittmore to Directors, dated March 18, 1919.....	p. 450, c. 3
642*	Letter, Mr. Dittmore to Directors, dated Feb. 3, 1919.....	p. 438, c. 1-2	678	Memoranda drawn up as result of conference of Counsel for both Directors and Trustees, Feb. 1, 1919, marked for identification (see Ex. 23)	p. 455, c. 1 to p. 456, c. 2
642*	Portion of Record Directors' Meeting, Feb. 4, 1919.....	p. 438, c. 2	679	Portion of Letter, Mr. Ogden to Capt. Riddle, dated Feb. 15, 1919.....	p. 459, c. 2-3
643	This number not used.		680	Memorandum as amended by Mr. Dickey in conference with Trustees on March 6, 1919 (see Ex. 683).....	p. 464, c. 1 to p. 469, c. 3 p. 509, c. 3 to p. 511, c. 3 p. 527, c. 3 to p. 529, c. 3
644	Portion of Record Directors' Meeting, Feb. 5, 1919 (see Ex. 25).....	p. 438, c. 2 to p. 439, c. 2	681	Document known as "The Judge Smith Memorandum".....	p. 470, c. 3 to p. 473, c. 1
645	Portion of Record Directors' Meeting, Feb. 6, 1919.....	p. 438, c. 3	682	Document, based on Ex. 681, brought by Trustees to Directors' Meeting, March 11, 1919.....	p. 473, c. 1 to p. 475, c. 1
646	Portion of Record Directors' Meeting, Feb. 7, 1919.....	p. 439, c. 3	683	Copy of Memorandum with further amendments by Trustees, sent to Mr. Dickey's home March 6, 1919 (see Ex. 680).....	p. 475, c. 3 to p. 476, c. 1
647	Portions of Directors' Record, Joint Meeting, Feb. 10, 1919 (see Ex. 26a) ..	p. 439, c. 3 to p. 440, c. 1	684	Letter Press Copy of Letter, Directors to Trustees, dated April 13, 1916....	p. 483, c. 2-3
648	Copy of Letter, Mr. Dittmore to Directors, dated Feb. 10, 1919.....	p. 440, c. 1		Ex. 685 to Ex. 690 inclusive are marked for identification.	
649	Copy of Letter, Mr. Dittmore to Directors, dated Feb. 10, 1919.....	p. 440, c. 1 to p. 442, c. 1	685	Copy of Pamphlet "Answers to Questions Concerning Christian Science" by Edward A. Kimball, C.S.D.....	p. 485, c. 1
650	Copy of Letter, Mr. Dittmore to Directors, dated Jan. 24, 1919.....	p. 442, c. 2-3	686	Copy of Pamphlet "Christian Science Healing vs. Mental Suggestion" by Frederick Dixon.....	p. 485, c. 1
651	Portion of Record Directors' Meeting, January, 1919.....	p. 442, c. 3 to p. 443, c. 1	687	Copy of Pamphlet "Confidence and Supply," in French.....	p. 485, c. 1
651a	Extract from Record Directors' Meeting, Feb. 17, 1919.....	p. 443, c. 1-3	688	Copy of Pamphlet "Christian Science, the Resurrection and the Life," in Dutch, by Clarence W. Chadwick, C.S.B.	p. 485, c. 2
652	Letter, Mr. Dittmore to Directors, dated Feb. 17, 1919.....	p. 443, c. 2-3	689	Copy of Lecture "Christian Science; or Deliverance from Evil," in Dutch, by Wm. P. McKenzie, C.S.B.....	p. 485, c. 1
653	Extract from Record Directors' Meeting, Feb. 18, 1919 (see Ex. 211).....	p. 443, c. 3 to p. 444, c. 1	690	Copy of Pamphlet "Christian Science: Its Results," in French, by Wm. R. Rathvon, C.S.B.....	p. 485, c. 2
654	Portions of Record Directors' Meeting, Feb. 20, 1919.....	p. 444, c. 1-2	691	Letter, Adam H. Dickey, Secretary, to Directors, dated Aug. 9, 1908.....	p. 486, c. 3
655	Letter, Mr. Dittmore to Directors, dated Feb. 20, 1919.....	p. 444, c. 2-3	692	Statement by Mrs. Eddy, from Christian Science Journal, October, 1904..	p. 486, c. 3 to p. 487, c. 1
656	Letter, Mr. Dittmore to Directors, dated Feb. 19, 1919.....	p. 444, c. 3 to p. 445, c. 1	693	This number not used.	
657	Portions of Record Directors' Meeting, Feb. 21, 1919.....	p. 445, c. 1-2	694	Memorandum prepared by Mr. Dittmore, read in Directors' Meeting, April 24, 1918.....	p. 506, c. 3 to p. 507, c. 1
658	Portion of Directors' Record, Joint Meeting, Feb. 24, 1919 (see Ex. 26) ..	p. 445, c. 2	695	Letter, Mr. Dittmore to Directors, dated April 25, 1918.....	p. 507, c. 2
659	Portions of Record Directors' Meeting, Feb. 25, 1919.....	p. 445, c. 2 to p. 446, c. 1	696	Letter, Mr. Dittmore to Directors, dated May 27, 1918.....	p. 507, c. 2-3
660	Copy of Letter, Mr. Dittmore to Directors, dated Feb. 24, 1919.....	p. 446, c. 1-2	697	Pencil Memorandum, signed John V. Dittmore, dated Aug. 15, 1918.....	p. 508, c. 2
661	Copy of Letter, Directors to Trustees, dated Feb. 26, 1919.....	p. 446, c. 3	697a	Typewritten Copy of Above, dated Aug. 15, 1918.....	p. 508, c. 3
662	Copy of Letter, in Reply to Ex. 661, Trustees to Directors, dated March 6, 1919.....	p. 446, c. 3 to p. 447, c. 1	698	Pencil Memorandum in Mr. Dittmore's handwriting, dated Aug. 14, 1918	p. 508, c. 3 to p. 509, c. 1
663	Extract from Record Directors' Meeting, Feb. 26, 1919 (see Ex. 216).....	p. 447, c. 1	699	Memorandum Mr. Dittmore, dated Aug. 21, 1918.....	p. 513, c. 3 to p. 514, c. 1
664	Extract from Record Directors' Meeting, Feb. 27, 1919.....	p. 447, c. 2	700	Copy of Letter, Directors to Trustees, dated March 3, 1919.....	p. 523, c. 2-3
665	Copy of Letter, Directors to Trustees, dated Feb. 27, 1919.....	p. 447, c. 3 to p. 448, c. 1	701	Copy of Letter, Mr. Watts, Business Manager, to Directors, dated March 21, 1919 (see Ex. 665 and Ex. 669)....	p. 523, c. 3
665a	Original Letter, Directors to Trustees, dated Feb. 27, 1919, duplicate of Ex. 665.....	p. 523, c. 3 to p. 524, c. 2	702	Letter, Judge Clifford P. Smith to Directors, dated Dec. 19, 1918.....	p. 526, c. 1-2
666	Extract from Record Directors' Meeting, March 3, 1919 (see Ex. 218).....	p. 448, c. 2	703	Copy of Letter to Judge Septimus J. Hanna, dated April 15, 1919 (without signature, initialed "WRR-F")..	p. 550, c. 2 to p. 551, c. 1
667	Extract from Record Directors' Meeting, March 4, 1919.....	p. 448, c. 2			
668	Extract from Record Directors' Meeting, March 5, 1919 (see Ex. 219).....	p. 448, c. 2-3			
669	Letter, Directors to Trustees, dated March 13, 1919.....	p. 448, c. 3 to p. 449, c. 1			
670	Letter, Christian Science Publishing Society Business Manager to Directors, dated March 14, 1919.....	p. 449, c. 1			
671	Extract from Directors' Record, Joint Meeting, March 10, 1919.....	p. 449, c. 3			
672	Extract from Directors' Record, Joint Meeting, March 11, 1919.....	p. 449, c. 3			
673	Letter, Directors to Trustees, dated March 10, 1919.....	p. 449, c. 3 to p. 450, c. 1			
674	Letter, Trustees to Directors, dated March 12, 1919, in reply to Ex. 673..	p. 450, c. 1			

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704	Copy of Letter, Mr. Dickey to Judge Hanna, dated April 15, 1919.....	p. 551, c. 1 to p. 552, c. 1	733	Copy of Letter, Mrs. Eddy to Joseph Armstrong, dated Oct. 13, 1898 (Vol. 23, Letters and Miscellany).....	p. 666, c. 1-2
705	Copy Church Manual, "Revised Edition," 1897, or the 6th and 7th editions	p. 553, c. 1 to p. 554, c. 1	734	Extract from Record Directors' Meeting, Oct. 22, 1898 (see Ex. 116).....	p. 666, c. 2-3
706	Letter, Mrs. Eddy to Mr. McKenzie, dated Feb. 2nd week, 1898 (Letters and Miscellany, Vol. 37) re Eighth Edition of Church Manual.....	p. 554, c. 1-2	735	Extract from Record Meeting of the First or Executive Members (Vol. 2, p. 204), Oct. 22, 1898.....	p. 666, c. 3
707	Copy of Eighth Edition of Church Manual, 1898.....	p. 554, c. 1 to p. 555, c. 3	736	Copy of Letter, Trustees to Directors, dated May 27, 1912.....	p. 666, c. 3 to p. 667, c. 2
707½	Letter, William P. McKenzie to Mrs. Eddy, dated Aug. 11, 1898.....	p. 556, c. 1-3	737	Extract from Record Directors' Meeting, July 22, 1912.....	p. 667, c. 2-3
708	Copy of Letter, Wm. P. McKenzie to Mrs. Eddy, dated Aug. 19, 1898.....	p. 557, c. 1	738	Letter, John V. Dittmore to Trustees under the Will of Mary Baker Eddy, dated Jan. 15, 1919, marked for identification	p. 680, c. 2 to p. 681, c. 1
709	Copy of Letter, Mrs. Eddy to Mr. McKenzie, dated Aug. 20, 1898.....	p. 557, c. 1-2	739	Copy of Letter, Mrs. Eddy to Mr. McLellan, dated March 19, 1903.....	p. 686, c. 1-2
710	Letter, Trustees to Mrs. Eddy, dated Aug. 25, 1898.....	p. 558, c. 1	740	Copy of Will of Mrs. Mary Baker G. Eddy	p. 687, c. 1 to p. 690, c. 1
711	Copy of Letter, Trustees to Mrs. Eddy, dated Sept. 6, 1898.....	p. 564, c. 1-3	741	Copy of Letter, Judge Smith to Directors, dated March 3, 1919.....	p. 691, c. 1 to p. 692, c. 1
712	Copy of Letter, Mrs. Eddy to Trustees, dated Sept. 8, 1898.....	p. 564, c. 1-3 see p. 42, c. 1	742	Copy of Letter, Judge Smith to Directors, dated March 1, 1919.....	p. 692, c. 1 to p. 693, c. 3
713	Letter, Statement from Mr. McKenzie to Mr. Eustace, dated Sept. 21, 1918..	p. 567, c. 1-3 see p. 591, c. 3	743	Certified Copy of Deed from Mary Baker Eddy to The First Church of Christ, Scientist, dated Jan. 25, 1898. See Ex. 115.....	p. 693, c. 3
714	Written Statement from Thomas W. Hatten, Nov. 26, 1918, to Mr. Eustace	p. 569, c. 3 to p. 570, c. 2	744	Certified Copy of Extracts from Deed, Mary Baker Eddy to Ira O. Knapp and others, dated Dec. 21, 1903.....	p. 693, c. 3 to p. 694, c. 2
715	Letter, Mr. McKenzie to Directors, dated Jan. 27, 1919.....	p. 571, c. 3 to p. 572, c. 3	745	Copy of Deed, Mr. Abbott to Directors, dated May 11, 1904.....	p. 696, c. 1-2
716	Telegram, addressed John V. Dittmore, signed McKenzie, dated Dec. 2, 1916.....	p. 573, c. 3 to p. 574, c. 3	746	Copy of Deed, E. Noyes Whitcomb to Directors, dated May 11, 1904.....	p. 696, c. 2 to p. 697, c. 1
716a	Letter, Mr. McKenzie to Mr. Dittmore, dated April 26, 1916.....	p. 574, c. 1-3	747	Copy of Petition, Ira O. Knapp et al., for appointment of a Trustee, dated Jan. 15, 1906; also Declaration of Trust, April 29, 1905, attached to Petition	p. 695, c. 2-3 p. 697, c. 2 to p. 698, c. 3
716b	Letter, Mr. McKenzie to Mr. Dittmore, dated May 9.....	p. 574, c. 2-3	748	Copy of Decree of the Supreme Court, issued Jan. 29, 1906.....	p. 698, c. 3 to p. 699, c. 1
716c	Letter, Mr. McKenzie to Mr. Dittmore, May 17, 1918.....	p. 574, c. 3	749	Copy of Bond, dated Jan. 29, 1906..	p. 699, c. 1-2
717	Letter, Mr. Dittmore to Trustees, dated Nov. 7, 1916.....	p. 575, c. 1	750	Copy of Deed, Leon M. Abbott to Directors, dated June 1, 1914, together with Letter attached from Mr. Dittmore to Mr. Abbott, dated May 28, 1914.....	p. 699, c. 2 to p. 700, c. 2
718*	Copy of Letter, Directors to Mr. McKenzie, Editor, Christian Science Publishing Society, dated Dec. 23, 1918..	p. 576, c. 3 to p. 577, c. 1	751	Extracts from Record Directors' Meeting, Nov. 1, 1917.....	p. 701, c. 2 to p. 707, c. 2
718*	Copy of Letter, Mr. McKenzie to Directors, dated Feb. 14, 1916; copy taken from Mr. Dittmore's file....	p. 579, c. 2 and p. 581, c. 1	752	Extracts from Record Directors' Meeting, Dec. 21, 1917.....	p. 707, c. 3
719	Draft of Letter, Mr. McKenzie to Directors, dated Feb. 15, 1916, marked for identification and later admitted (see Ex. 324).....	p. 583, c. 1 to p. 585, c. 2 and p. 593, c. 3 to p. 594, c. 1 also p. 568, c. 2 to p. 569, c. 1	753	This number not used.	
720	Extract from Record Directors' Meeting, July 19, 1917.....	p. 594, c. 1	753a	Letter, Mrs. Eddy to Directors, dated May 8, 1893 (Vol. 1, p. 133, Letters and Miscellany)	p. 710, c. 1-3
721	Copy of Letter, Directors to Trustees, dated June 4, 1917.....	p. 595, c. 1-3	754	Letter, Mrs. Eddy to Directors, dated Sept. 9, 1893 (Vol. 1, p. 139, Letters and Miscellany)	p. 710, c. 3
722	Letter, Directors to Committee on Finance, dated Sept. 13, 1917.....	p. 619, c. 2 to p. 620, c. 1	755	Letter, Mrs. Eddy to Directors, dated Sept. 30, 1904 (Vol. 4, p. 173, Letters and Miscellany)	p. 710, c. 3 to p. 711, c. 1
723	Letter, Committee on Finance to Directors, dated Sept. 17, 1917.....	p. 620, c. 1-2	756	Letter, Mrs. Eddy to Directors, dated July 22, 1909 (Vol. 6, p. 177, Letters and Miscellany)	p. 711, c. 1
724	Original Records of Directors, mostly month of June, 1915, marked for identification	p. 613, c. 2-3 and p. 626, c. 1	757	Letter, Mrs. Eddy to Directors, dated Oct. 27, 1910 (Vol. 6, p. 221, Letters and Miscellany)	p. 711, c. 1
725	Portion of Record Directors' Meeting, Sept. 27, 1918.....	p. 636, c. 1	758	Letter, Mrs. Eddy to Directors, dated Feb. 5, 1906 (Vol. 8, p. 203, Letters and Miscellany)	p. 711, c. 2
726	Copy of Letter, Mr. Rathvon to Trustees and Directors, dated Feb. 10, 1919	p. 636, c. 2 to p. 637, c. 1	759	Letter, Mrs. Eddy to Directors, dated June 12, 1908 (Vol. 9, p. 87, Letters and Miscellany).....	p. 711, c. 2
727	Copy of Letter, Mr. Rathvon, Mrs. Eddy's Secretary, to Trustees, dated Jan. 20, 1909.....	p. 639, c. 3 to p. 640, c. 1	760	Typewritten Letter, Mrs. Eddy to Directors, dated June 14, 1908 (Vol. 9, p. 93, Letters and Miscellany)	p. 711, c. 2-3
728	Copy of Letter, Trustees to Mrs. Eddy, dated Jan. 15, 1909.....	p. 640, c. 1	761	Portion of Record Meeting of First Members, Sept. 25, 1895.....	p. 711, c. 3
729	Copy of "Special Report Newsprint Contracts," Nov. 18, 1918.....	p. 651, c. 1 to p. 652, c. 3			
730	Copy of "Federal Trade Commission Prices," 1918.....	p. 664, c. 1			
731	Contract with Canadian Export Co., Ltd., dated Jan. 5, 1918.....	p. 664, c. 1-2			
732	Letter, Mrs. Eddy to Mr. Neal, dated March 1, 1897 (Vol. 28, Letters and Miscellany)	p. 665, c. 1			

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762	Typewritten Copy of Provision to be placed in Article V, Section 1, of the Church Manual (Vol. 7, p. 65, Letters and Miscellany)	p. 711, c. 3 to p. 712, c. 1
763	Portion of Record, Meeting of First Members, Dec. 13, 1898.....	p. 712, c. 1
764	Copy of Letter, Mrs. Eddy to a Student, dated May 23, 1906 (Vol. 42, Letters and Miscellany).....	p. 712, c. 3 to p. 713, c. 1
765	Copy of Letter, Mrs. Eddy to Directors, dated (probably Nov. 12, 1907) (Vol. 6, p. 49, Letters and Miscellany)	p. 713, c. 1-2
766	Extracts from Church Manual (Twenty-ninth Edition, p. 98).....	p. 713, c. 2-3
767	Extract Indenture between Mary Baker Eddy and Ira O. Knapp and others, dated Dec. 19, 1906.....	p. 714, c. 1 to p. 715, c. 1
768	Copy of Record Special Meeting Directors, Nov. 21, 1910.....	p. 715, c. 2
769	This number not used.	
770	Extract from Record Directors' Meeting, Oct. 1, 1895.....	p. 715, c. 3 to p. 716, c. 1
771	Extract from Record Directors' Meeting, Nov. 2, 1895.....	p. 716, c. 1
772	Extract from Record Directors' Meeting, Nov. 8, 1895.....	p. 716, c. 1
773	This number not used.	
774	Extract from Record Directors' Meeting, May 31, 1919.....	p. 716, c. 1-2
775	Extract from Record Directors' Meeting, March 23, 1893.....	p. 716, c. 2-3
775a	Extract from Record Directors' Meeting, March 28, 1893.....	p. 716, c. 3
776	Extract from Record Directors' Meeting, Jan. 6, 1908.....	p. 716, c. 3
777	Extract from Record Directors' Meeting, Sept. 25, 1918.....	p. 716, c. 3
778	Extract from Record Directors' Meeting, Sept. 27, 1918.....	p. 716, c. 3 to p. 717, c. 1
779	Extract from Record Directors' Meeting, June 19, 1902.....	p. 717, c. 1
780	Extract from Record Directors' Meeting, Dec. 5, 1902.....	p. 717, c. 1
781	Extract from Record Directors' Meeting, Dec. 10, 1902.....	p. 717, c. 1-2
782	Extract from Record Directors' Meeting, July 22, 1912.....	p. 717, c. 2
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784	Extract from Record First Members' Meeting, Jan. 15, 1898 (Vol. 2).....	p. 717, c. 3 to p. 718, c. 1
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