Pamphlets And Reports Regarding Deposit Guaranty in Nebraska [2 of 2]

from 784-Lew

REPORT

of the

Banking Investigation Committee

on

Department of Banking
as Receiver and Liquidating Agent
of Failed and Insolvent Banks
Since January 1, 1930

◆

Authorized by

House Roll No. 392

Passed by the 1935 Legislature

NEBRASKA

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Under the Direction of the

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TO: Honorable Roy L. Cochran, Governor,
Honorable Walter H. Jurgenson, Lt. Governor,
Honorable W. H. O'Gara, Speaker, and
Members of the Fifty-First (Special) Session of the Legislature.

Dear Sirs and Members:

Pursuant to House Roll 392, enacted by the Fiftieth Session of the Legislature, I am herewith submitting for your consideration a summary report of the Receivership Division of the State Department of Banking. This report comprises only that part which has to do with the supervision of the Receivership Department in connection with failed banks, and covers the period from January 1, 1930, to the close of the final hearing, October 15, 1935. The findings of the State Department of Banking proper will be incorporated in a later report.

Owing to what might be designated an emergency, it was decided to complete the Receivership report first, that it might be presented to the Special Session of the legislature. Because of the dual situation now existing in the Receivership and Banking Department, this will give your body an opportunity, if thought practical, to enact remedial legislation to correct, if possible, the conditions now existing in those divisions.

By "dual situation" I mean that at the present time two separate and distinct departments exist with two separate departmental heads.

The 1933 Session of the legislature passed Senate File 263, providing a new set-up for the Banking Department, creating a Superintendent of Banking, which gave him control, among other things, of all state banks as well as receiverships, but owing to the fact that the law could not be made retroactive because of constitutional limitations, he could not legally take over a large number of prior judicial receiverships without the voluntary consent of the courts and the duly constituted head of these receiverships.

As it now stands, one section of the insolvent banks is under the control of the Superintendent of Banking, while several hundred, as the report will show, are a part of the receivership division. This, in our opinion, makes for a divided responsibility, is cumbersome and does not permit central or unified control.

Then there is the economical phase of the matter. I do not believe that the two departments or divisions, with two different sets of officers and employees, can function as economically or as efficiently as under one departmental head.

It has been the sincere purpose of the members of the committee and the Auditor to give you as clear and concise a report as possible, portraying the facts as they have been found, backed by evidence as nearly uncontestable as the findings would permit. Where there has been evidence of neglect or apparent mismanagement, or dereliction of duty

on the part of the Receivership Department or the officials of insolvent banks, the committee has attempted to set out these deficiencies in as thoroughly impartial and unbiased manner as possible in so large an undertaking. On the other hand the committee has welcomed testimony from the viewpoint of both the depositors and those who are directly concerned in the matter of handling the business of the insolvent banks, as well as those whose duties were connected with the receiverships proper.

Owing to the huge task that it would entail it was early developed by the committee, that inasmuch as the Banking Department is next to the largest of the state's activities, second only to the Highway Department, that a detailed accounting and examination of all banks in receivership could not be had. Time and expense was a factor in deciding on a summary or a survey and to incorporate as much in the report as time and expense permitted. I am doubtful if a prolonged audit and examination would have been justified. The report as it comes from the hands of the committee is a clear, concise and constructive outline of all salient matters connected with the receivership activities. Later the committee's conclusions along this line were confirmed.

A general invitation was sent out to depositors' committees to report to the committee if out state examinations were required. This invitation was also extended to individuals who might have complaints and which would throw light on the manner of handling receiverships as well as the conduct of the banks by the bank officials themselves.

Here the committee members found themselves somewhat handicapped by the comparatively few complaints that were filed, when the number of banks in receivership was considered. Most of these complaints, except those which occurred prior to the date set by House Roll 392, January 1, 1930, and would have no particular bearing on this investigation, were investigated, and regular examinations held. Where it seemed impractical to hold examinations, members of the committee personally visited the communities where individual complaints were filed, securing what information they could to reinforce their findings in other channels.

The committee, in conformity with the Statute under which it was organized, is, in a broad sense, a fact-finding body, and herein presents a report of its findings and recommendations in the form of a survey of the conditions as it found them, particularly as to the manner in which banks before and after receivership during the period of the audit, were handled. In most cases where the committee found violations of the Statutes by those directly connected with the banks, the Statute of Limitations had run against prosecutions, and the examinations took on the appearance of the rattling of old dry bones. Depositors were seemingly the goats, and many pathetic cases were unearthed. Large numbers of depositors had been ruined financially. This was the tragic part of the whole affair. In some instances bankers fought un-

selfishly and desperately to save their banks, losing everything they had, along with the depositors. There were cases where apparent selfish motives were involved and the officials with seeming abandon recklessly threw caution to the winds, violating statutes with impunity in order to save themselves from the holocaust of ruin and financial oblivion that swept over them like a tidal wave.

In the final analysis and in view of the improbability that at this late date the depositor can be materially benefited by the findings of the committee, if this report shall have the effect of more efficient business supervision of banks and other like institutions through strengthening of the Statutes, and a closer co-ordination of the banking and receivership division in the future, it is my opinion that the labor and expense of this examination will no doubt be worth the time and money expended.

It has been suggested that the Department of Banking be taken out of politics. Just how this is to be accomplished is a mooted question. Opinions differ as to the method to be adopted. One suggestion is that the superintendent be appointed for life, that his assistants be under Civil Service. The objection to this is that it smacks of a mild form of dictatorship, and places too much power in the hands of one man. Another suggestion is a commission form of control. However, there is no assurance that this plan would not be subject to political manipulation in time. Another is that the department be under the supervision of a State Board composed of the Governor, Attorney General and one other state officer, with regular monthly meetings in which problems of the department may be discussed and ironed out. This plan also has its so called political drawbacks. Other suggestions have been set out, but we have not time nor space here to enumerate them. To my mind the solution to the problem is much like attempting to levy a tax that will prove painless to the taxpayer. However, it seems to me that some form or method of control ought to be invented whereby this very essential and important unit of state government could at least be partially, if not wholly, diverted from political manipulation in the future.

In summing up I would like to be charitable enough to believe that many of the mistakes of misjudgment, dereliction, indiscretion or by whatever appellation may be inscribed to the handling of the Receiver ship Department, that they were not made with criminal intent, but rather in a time of stress in which men's souls were tried in a financial storm-tossed era that necessitated drastic methods in the attempt at regulation in matters pertaining to the duties of the receivership division.

The majority committee's non-concurrence in the minority report of recommendations is based on the conclusion that to avoid any semblance of prejudice, bias or unfairness on the part of the members of the committee, it was thought advisable to present the full and impartial facts to the legislature, together with recommendations for more efficient administration of the department, clearly warranted by the evidence, and leave that part of the highly controversial points to be

brought out by your Committee and presented to you for your final judgment.

Owing to the size of the transcripts, some of them comprising several hundred pages, it was not considered practical or necessary to make them all a part of this already voluminous report. Only those portions of the testimony and exhibits as were deemed essential in clarifying certain controversial points have been included. However, all of the work sheets, exhibits and transcripts are being made a record and filed in the Auditor's office where they will be available for committee or individual inspection.

In conclusion, let me say that the members of this committee have worked tirelessly, at times laboring seven days of the week and many nights until after midnight, and I want here to express my appreciation of their efforts in bringing to you this report concerning all things herein set out.

Respectfully submitted,

FRED C. AYRES, STATE AUDITOR.

November 5, 1935

To Hon. Fred C. Ayres,
Auditor of Public Accounts,
State of Nebraska,
Lincoln, Nebraska.

Sir:

Acting for you and your predecessor, the late Wm. B. Price, by whom my associates and I were appointed under House Roll No. 392, enacted by the 1935 Legislature, I herewith submit to you our report on the activities of the Department of Banking as Receiver and Liquidating Agent of failed or insolvent banks. Our work in connection with the Department of Banking is not yet completed. Upon completion, we will file a report on that division of the investigation.

Your Committee appointed by the late Wm. B. Price consists of Ellsworth L. Fulk, Certified Public Accountant, Chief Examiner, B. Frank Watson, Attorney, W. J. Williams, Special Investigator, and W. D. Messenger, Assistant Examiner. Mr. Watson, the attorney for your Committee, wrote the law opinions and the conclusions, therefrom, presented herewith.

The work of investigation was begun by your Committee on April 23, 1935. Difficulty was encountered in securing a suitable place to work. For a period of four months your Committee had a table in one of the rooms occupied by the Receivership Division of the Department of Banking. This arrangement was unsatisfactory because your Committee had no privacy and could not discuss the questions that were continually coming before it. About the first of September, 1935, we were given Room 1315, State Capitol Building, Lincoln, Nebraska, which has proved to be very satisfactory.

House Roll No. 392 provides for an investigation and audit of all the business transactions and activities of the Department of Banking, including its activities as Receiver and Liquidating Agent of failed and insolvent banks since January 1, 1930. It was evident at the beginning, that with an appropriation of $20,000.00 your Committee could not audit all of the transactions of the Receivership Division from January 1, 1930, to date. The report of the audit and investigation conducted in 1929 and 1930, under the supervision of the Hon. A. C. Shallenberger, shows that 116 banks and 74 "Sale Asset Trusts" were audited, 7 special reports on certain banks and 3 general reports were prepared at a cost of $99,027.82. On January 1, 1930, there were 253 receiverships in the process of liquidation, and on October 31, 1935, there were 324 such receiverships. During that period 241 new receiverships were received and 170 closed. Realizing that a complete audit could not be made of

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NOTE: Page references unless otherwise stated refer to transcript of testimony printed herewith.

all of the receiverships, your Committee decided to spend its time examining and investigating all phases possible of the Receivership Division rather than make a complete audit of a certain group of receiverships.

Public hearings were held at Omaha, Wisner and Lincoln, Nebraska, in accordance with the provisions of House Roll No. 392. Depositions were taken in connection with the Bank of Ragan and The State Bank of Stella, a going bank, as well as the deposition of John C. Byrnes. These have been incorporated as a part of the Lincoln public hearing. The depositions of Rollin Buell, Wm. Byrkit and Goldie Frederick were also taken. Shorthand reporters have made a record of the evidence introduced at the public hearings and of the depositions. According to House Roll No. 392 these are public records and are on file in the office of the Auditor of Public Accounts of the State of Nebraska.

The information submitted in our report was obtained from our examination of the records of the Department of Banking and Receivership Division, conversation with the officials and employees of the Department, creditors of failed banks and the sworn testimony contained in the record of public hearings and depositions.

TYPES AND NUMBERS OF RECEIVERSHIPS

On January 1, 1930, there were two types of trusts being liquidated by the Department: Judicial Receiverships, or those in which an individual by virtue of his office as Secretary of the Department of Trade and Commerce or Superintendent of Banks was appointed as receiver by the court; and "Sale Asset Trusts" which were created by the action of the Guarantee Fund Commission in buying back assets of receiverships which they wanted to close before they were completely liquidated.

A law creating a new classification of trusts, known as "Administrative Receiverships," was passed by the 1933 Legislature and became effective May 9, 1933. Administrative Receiverships are differentiated from Judicial Receiverships in that the Department of Banking is named the Receiver and Liquidating Agent and it is vested with title to the assets of the failed bank (see Paragraph "Administrative Receiverships Have Title As Statutory Successors").

We present a summary showing the changes in the number of Receiverships from January 1, 1930, to October 31, 1935, together with a statement of the number of regular employees on January 1st of each year:

Year.....1930	1931	1932	1933	1934	1935	Total
Receiverships at Beginning of Year.....253	276	335	337	335	342	253
Banks Placed in Receivership 44	92	29	27	45	4	241
Total 297	368	364	364	380	346	494
Receiverships Closed..... 21	33	27	29	38	22	170

Year.....	1930	1931	1932	1933	1934	1935	Total
Receiverships at Close of Calendar Years and October 31, 1935.....	276	335	337	335	342	324	324
Number of Regular Employees and Assistant Receivers January 1st.....	81	91	101	109	91	84	

On October 31, 1935, there were 72 regular employees and assistant receivers. The above figures do not include assistant receivers' helpers.

In addition to the 241 banks placed in receivership as shown above, there were 127 banks suspending business during this period. Of these 127 banks, 63 were reopened, 45 were permitted by the Department of Banking to liquidate voluntarily, and 19 were turned to trustees or independent receivers, over whom the Department of Banking has no jurisdiction.

Of the 324 trusts in the process of liquidation on October 31, 1935, 239 are Judicial Receiverships and 85 are Administrative Receiverships. We are informed by Department officials that probably 31 Judicial Receiverships and 3 Administrative Receiverships will be closed by December 31, 1935.

VERIFICATION OF BONDS, STOCKS AND WARRANTS

It was the wish of the late Wm. B. Price, when we began our investigation, that we verify the bonds, stocks and warrants on hand in each Receivership on April 30, 1935, and the transactions in these accounts from the date the Receiver was appointed to April 30, 1935.

Bonds, stocks and warrants as shown by the Receiver's opening inventory of each trust were listed. We recorded the sales as shown by the ledger sheets for each trust and verified the bonds, stocks and warrants shown to be on hand by the actual inspection of the securities or by direct communication with the depository. Besides verifying the securities on hand, we verified the interest coupons attached, in the case of coupon bonds. We found the coupons due January 1, 1931, on $2,000 par value Republic of Bolivia, 7% Bonds due in 1958, missing; also the coupons due April 1, 1931, on $2,000 par value of Republic of Peru 6% Bonds, due in 1961. The records show that $31.40 has been collected on the two coupons missing from the Republic of Peru bonds. Although the coupons are not worth a great deal, the bonds can only be sold at a large discount when offered without the coupons. The Department Auditor has been unable to locate these coupons.

Wherever possible, we verified the amount of the sales of stocks, bonds and warrants as shown by the books by examination of the actual sales slips and communication with the pledgees where bonds had been sold by them. Our verification of the sale of securities was hampered by the lack of adequate records and by the fact that pledgees were reluctant to give information concerning the amounts for which they sold bonds pledged to them or the amounts they received from coupons on pledged

bonds. In those instances where the original sales slip was not readily available, we attempted to verify the sale price by independent methods. Many of these were over-the-counter sales and, therefore, could not be checked and only the Department memorandum was available.

We made a test check of the interest received during the period the securities were held by the Receiverships and found several instances where the interest was credited to the wrong trusts. These have been called to the attention of the Auditor for the Receivership Division and corrected.

In examining the securities of the Bank of Staplehurst, we found 6 notes, of $100 each of the North American Gas and Electric Company, missing. These were given by the North American Gas and Electric Company in lieu of coupons due on $6,000 par value of their bonds owned by the Bank of Staplehurst. These notes were found in the possession of a trust company which was holding them for the Bank of Staplehurst. They have since been delivered to the Receivership Division. Although the notes have little market value at the present time, it is difficult to sell the bonds without them.

In the case of the Farmers State Bank of Loomis, the investigation showed that $191.25 of coupons on U. S. Liberty bonds were not accounted for. The proceeds of these coupons had been withheld pending a settlement of a balance on rediscounts, and although the balance on rediscounts had been settled for some time, the Receivership Division did not know the $191.25 was due them. When called to the Auditor's attention, the money was immediately paid and credited to the proper trust.

Securities belonging to the Weston Bank were held by a trustee under an escrow agreement. As coupons amounting to $150.00 matured on the securities, the proceeds were credited to the interest account of the trustee pending a final delivery under the escrow agreement. When delivery of the securities was made some time later, the trustee neglected to remit the interest which had been collected. When this was called to the attention of the Receivership Division, it was collected and credited to the proper trust.

The Bank of Orleans closed December 9, 1930. At the time it closed, it had pledged to the County Treasurer of Harlan County, $14,000.00 of Lincoln Joint Stock Land Bank bonds. The interest coupons, amounting to $270.00, due January 1, 1931, on $12,000 par value of these bonds were collected and the money retained by the County Treasurer. When the bonds were sold by the County Treasurer in 1934, and settlement made with the Receiver for the Bank of Orleans, the Receivership was not given credit for the $270.00 interest coupons collected January 1, 1931.

Our verification of the bonds, stocks and warrants and our test check of the interest collected thereon causes us to make the following recommendations:

Procure an original sale slip of the purchaser for each sale of securities and attach the sale slip to the voucher.

The records of each Receivership should be kept in such manner as to correctly reflect the profit or loss on the sale of securities and to show the interest earned thereon.

Obtain court orders authorizing or confirming the sale of all securities.

The Receiver should notify all pledgees that pledged securities must not be sold without permission of the receiver, and if a pledgee sells for less than a fair market price, he will immediately be sued for an accounting.

ADMINISTRATION FUNDS

Administration Fund No. 1 is the fund out of which all expenditures are made which cannot be charged direct to one of the Judicial Receiverships or "Sale Asset Trusts." We analyzed the transactions and submit a summary below:

RECEIPTS AND DISBURSEMENTS

Administration Fund No. 1.
January 1, 1930, to April 30, 1935.

Cash on Deposit, January 1, 1930		$ 8,496.94
Receipts:		
Assessment of Trusts	$432,983.39	
Balances Transferred from Closed Trusts	7,816.00	
Interest	8,684.27	
Refunds of Expenses	15,494.30	
Refund of Postage by "Going Bank" Division	1,628.23	
Miscellaneous	926.06	467,532.25
		$476,029.19
Disbursements:		
Salaries	$367,587.78	
Traveling Expenses	41,943.54	
Postage	21,487.84	
Office Supplies and Printing	19,330.45	
Telephone and Telegraph	6,180.57	
Insurance and Bond Premiums	2,913.72	
Office Equipment	5,078.76	
Miscellaneous	4,139.54	468,662.20
Cash on Deposit, April 30, 1935		$ 7,366.99

We have prepared and present herewith an analysis of the cash receipts and disbursements of Administration Fund No. 2. This fund shows the charges to the Administrative Receiverships and bears the same relation to them as Administration Fund No. 1 bears to the Judicial Receiverships and "Sale Asset Trusts."

RECEIPTS AND DISBURSEMENTS
Administration Fund No. 2.
September 30, 1933, to April 30, 1935.

Receipts:		
Assessment of Trusts		$ 62,125.00
Refunds of Expenses		2,903.70
		$ 65,028.70
Disbursements:		
Salaries	$45,590.64	
Traveling Expenses	2,285.32	
Postage	3,045.06	
Office Supplies and Printing	1,969.27	
Telephone and Telegraph	484.93	
Office Equipment	378.64	
Miscellaneous	831.56	54,585.42
Cash on Deposit, April 30, 1935		$ 10,443.28

In a system of centralized receivership there are many items of expense which cannot be charged directly to any one trust. Section 8-1,128 C. S. Supp. Neb. 1933, provides that such expenses shall be allocated to the various trusts in liquidation but does not provide a basis for allocation.

Mr. Ivan W. Hedge, Auditor for the Receivership Division, testified (pages 319-320 Lincoln Hearing) that it has been the policy of the Receivership Division to make an arbitrary charge each quarter to the various trusts to pay such expenses of the Receivership Division. While no definite base has been established up to January 1, 1935, there has been an attempt at fairness inasmuch as the larger or more active trusts have borne the larger pro rata share of the expense.

Your Committee has studied this matter and found that to arrive at a more equitable distribution, an intricate accounting system would be required. This would entail considerable additional expense and would not aid the depositors in recovering their losses.

We were advised that since January 1, 1935, the expense of the Receivership Division has been prorated 60% to Judicial Receiverships and 40% to Administrative Receiverships. We find that the salary of Mr. Luikart, as Judicial Receiver, has been included in the total payroll for each month and that this total was used in computing the amount of salaries charged to Administrative Receiverships. By including the salary of Mr. Luikart in the total for the month of October, 1935, for example, the Administrative Receiverships are charged approximately 43% of the total salaries, exclusive of Mr. Luikart's, instead of 40%, as we were advised.

CONCENTRATION OF DEPOSITS

It was the original policy of the Department, when possible, to keep the cash balance of each receivership in the city or village where the

bank closed. This increased the amount of bookkeeping and was unsatisfactory in a centralized receivership system. Auditor Ivan W. Hedge believed that by concentrating the funds in a few depositories to be designated by the courts, the bookkeeping could be simplified and the funds would provide a source of revenue.

That this was a commendable policy is proved by the following summary of the receipts and disbursements from July 15, 1929, to September 30, 1935:

Receipts:		
Interest on Invested Funds		$ 69,218.91
Interest on Bank Deposits		51,975.56
Total Receipts		$121,194.47
Disbursements:		
Distributed to Depositors	$93,294.97	
Bank Charges	123.05	93,418.02
Cash on Deposit Awaiting Distribution to Depositors		$ 27,776.45

As shown by the above statement there has been earned $121,194.47 for depositors in Judicial Receiverships. This earning of $121,194.47 would not have been possible except by concentration of deposits, nor would it have been possible under a system of local receiverships.

In the Administrative Receiverships, there has been a similar earning of $4,312.82 from their inception to September 30, 1935.

"SALE ASSET TRUSTS"

It was apparent to the Guarantee Fund Commission that the sooner the collection of stockholders' liability could be started, the greater would be the recovery from this source. Before the stockholders' liability could be collected, it was necessary to exhaust the assets of the trust. This could only be accomplished by selling the assets at a public sale.

Scalpers appeared at the sales and the Guarantee Fund Commission awoke to the fact that some means must be taken to insure a reasonable price for the assets. Section 32, Chapter 191, Session Laws of 1923, provided the authority necessary to accomplish this purpose.

Under this law, the Guarantee Fund Commission purchased the assets of the receiverships at public sales for an amount which they believed to be fair. The assets so purchased were titled "Sales Asset Trusts" and so carried on the books of the Guarantee Fund Commission. On January 1, 1930, there were 74 such "Sale Asset Trusts." These trusts are still carried on the books. A summary of them, as prepared from the books without verification, on September 30, 1935, follows:

ASSETS

Cash		$11,863.99
Nominal Value of Assets:		
Assets Acquired	$ 84,016.87	
Bills Receivable	2,962,209.22	
Judgments	665,862.42	
Other Assets	32,506.76	
Overdrafts	22,408.14	
Real Estate	8,570.42	
	$3,775,573.83	
Less: Allowance for Doubtful Assets	3,709,674.78	65,899.05
		$77,763.04

LIABILITIES

Depositors' Guaranty Fund Equity	$23,050.67
Profit on Realization of Assets	54,712.37
	$77,763.04

The Depositors Guaranty Fund has $23,050.67 invested in the "Sale Asset Trusts" of which $11,863.99 is represented in cash.

At the present time, we are informed that practically all of the notes and most of the judgments have passed the statute of limitations, thus leaving only a nominal value in the remaining assets.

It is the belief of your Committee that the assets of these trusts should be sold at public auction, and the proceeds turned to the Guaranty Fund.

CONTRIBUTIONS TO POLITICAL CAMPAIGN FUNDS

Your Committee was informed that employees of the Department of Banking had been discharged because they refused to contribute to political campaign funds. We received no evidence to prove this statement.

Mr. B. H. Schroeder, Assistant Receiver of the South Omaha State Bank, testified (page 161 South Omaha Hearing) that he had been requested to contribute to political campaign funds while in the employ of the Receivership Division.

Upon first being questioned, as to requesting campaign funds, Mr. C. G. Stoll refused to answer, stating that the question was not within the province of the committee (pages 136 and 137 Lincoln Hearing). Later during the hearing, Mr. Stoll was asked this question again and his testimony, from which we quote, is found on page 842 of the Lincoln Hearing:

> "Well, as long as there has been so much testimony, and although I felt it was not part of the investigation, I am willing to make a statement on it. When the primary campaign was under way, it was suggested to me that we should arrange for

a campaign fund to help defray the expenses of the campaign, for the reason that the Receivership Division was under attack; and I knew that all the boys in the field, as well as the office force, were very much interested in maintaining the centralized system of receiverships and they all felt that that system was the proper way to liquidate banks that had been closed, and it was suggested to me by Mr. Luikart that we endeavor to build up a campaign fund. It was suggested to every employee that if they cared to do so they could contribute to this fund; no definite amount was stated but it was suggested if they wanted to contribute 10% of their salary, they could do so."

Mr. Stoll identified Exhibit No. 94, Page 212, to be similar to a letter sent out by him. A copy of Exhibit No. 94 follows:

"Governor Bryan is now engaged in his campaign for the nomination on the Democratic ticket for the United States Senate.

"Those of us who have been fortunate enough to serve under the Governor should rally to his support, as this is the only way we have of showing our appreciation of what he has done for us, and our friendship for him. Each member of our office force is contributing ten per cent of one month's salary to a campaign fund which is to be given as a surprise gift to Governor Bryan. May we expect the same from you, as a member of our field force?

"If you care to make this voluntary contribution please send check or draft to me, at my office address, marking the envelope 'personal', and I will see that it reaches the proper hands for the purpose intended.

Yours very truly,

CGS:DH (C. G. Stoll)."

An examination of the contributions to Governor Bryan's primary campaign fund for governor in 1932, filed in the office of the County Clerk, Lancaster County, Lincoln, Nebraska, shows that employees of the Department of Banking and Receivership Division contributed approximately $960.00. Most of the contributions, when compared with the employees' salaries, were found to be 10% of one month's salary. The records of the County Clerk of Lancaster County, show that employees of the Department of Banking and Receivership Division contributed approximately $2,080.00 to Governor Bryan's campaign fund for governor in the general election held in the fall of 1932. A comparison of the contributions with the monthly salaries of employees shows that in most instances they again contributed 10% of one month's salary. Employees of the Department of Banking and Receivership Division contributed approximately $1,125.00 to Governor Bryan's primary campaign fund for U. S. Senator in 1934.

There follows the testimony of Richard H. Larson, examiner for the Banking Department for a period of seven and one-half years, which clearly shows his attitude relative to employees of the Department of Banking being asked to contribute to political campaign funds (page 875 Lincoln Hearing):

"Mr. Woods told me that since the creation of the bank commissionership the examining department had been out of politics—he had not himself agreed to ask any examiner to contribute to a campaign fund. He told me the facts as I have described and said he would leave it up to me as to whether I cared to contribute or not. I told Mr. Woods that inasmuch as I was sure that politics and the examination of banks did not mix and should not go hand in hand, that I didn't care to have on my conscience a contribution to any political campaign. He told me that he would be pleased if I would tell the substance of that conversation to Mr. Luikart. As I recall, I went immediately, as soon as the opportunity presented itself, I went into Mr. Luikart's office and explained to him my stand on the subject of contributing to the campaign fund".

If the Department of Banking is to be taken out of politics, there should be a law prohibiting any employee of the Department of Banking or Receivership Division from contributing to any political campaign fund or spending any time campaigning for any political party while employed by the Department.

RECORDS AND FUNDS USED FOR POLITICAL PURPOSES

Exhibit 88, page 211, is a copy of a letter dated April 5, 1932, multigraphed on Department of Trade & Commerce stationery and signed by Governor Bryan (pages 725 and 726 Lincoln Hearing)

Mr. Ivan W. Hedge testified as follows relative to the above letter:

Q Do you know of any one using the typewriter to address envelopes—of your office force—to use in sending out letters like that?
A I think that about this time there was a number of envelopes addressed, but who sent them out, or what they were used for, I don't know.
Q You think there were some envelopes addressed?
A I think they were addressed.
Q And do you know with what names they were addressed?
A They were addressed with the names of depositors of these failed banks.
Q And were the envelopes in these purchases used for that?
A I could not say as to that.
Q And in what department were those addressed?
A I think in the dividend department.
Q Do you know who ordered them addressed at that time?
A No, I don't.

Mr. C. G. Stoll, then Chief of the Receivership Division, testified (pages 845 and 846 Lincoln Hearing) that the purchase of stamped envelopes in 1932 for mailing letters for Governor Bryan was done under the direction of Mr. Luikart. He also stated that he did not know who multigraphed the letters. The stenographers in the Receivership Division addressed part of the envelopes. Mr. Stoll also stated that at the time the Receivership Division was asked to make an advance for the stamps, he told Mr. Luikart he thought it was something that shouldn't

be done, but Mr. Luikart assured him that the matter would be taken care of, and with that understanding he permitted the stamps to be purchased.

Mr. E. H. Luikart testified (pages 67 and 68) that the cost of mailing the letter shown in Exhibit 88, page 211, was paid by vouchers drawn on the appropriation fund and that he approved the charge against the fund. In answer to the question as to whether his approval was on the instruction of Governor Bryan, he stated:

> "Well, he was sending out the letters to depositors; I assume it was; I never saw who he sent them to—he sent a great number of letters out to people over the State of Nebraska, I think mainly depositors, and asked that—I believe we gave him some aid after hours, our department did and other departments also helped address envelopes, and I supplied the—made requisition for the voucher for the stamped envelopes".

Mr. Luikart further testified he considered this charge for stamped envelopes a valid charge against the "Going Bank" Department on the grounds that the Governor was receiving a constant stream of letters inquiring about failed banks. Asked whether this was a political letter, Mr. Luikart testified as follows (page 69):

"Well, it depends on how you look at it."

Our examination of the records of the Receivership Division shows the following expenditures for stamped envelopes, which Mr. Ivan W. Hedge testified were later refunded to the Receivership Division:

March 25, 1932	$ 452.80
March 31, 1932	475.44
November 1, 1932	699.99
	$1,628.23

Upon further investigation we found that on May 12, 1933, voucher No. M41044 for $850.00 was drawn and approved by Mr. E. H. Luikart and on June 6, 1933, voucher No. M41844 for $850.00 was drawn and approved by Mr. E. H. Luikart. The vouchers were both drawn on the General Fund; Department of Banking; Bureau of Division, Receiverships; Fund, Maintenance; for postage.

Warrant No. M41044, dated May 17, 1933, for $850.00, and warrant No. M41844, dated June 13, 1933, for $850.00, were made payable to Trev. E. Gillaspie, P. M. For Dept. Trade & Com.—Expense State Receivership 204B. These warrants were used to purchase stamps and $1,628.23 of the stamps were given to the Receivership Division in settlement of the amounts shown previously as paid out of the Receivership Division. Stamps costing $71.77 were delivered to the "Going Bank" Department.

Our examination in the office of the State Treasurer disclosed that the two warrants for $850.00 each were charged against the special appropriation made by the 1931 Legislature of $10,000.00 for "Expense of Transferring of Guarantee Commission Receiverships."

We inquired of The Hanson Audit Co., Fremont, Nebraska, the firm which is auditing the State Treasurer's records, if this amount had been refunded to the Department of Banking, and we were advised it has not been.

Your Committee wishes to call attention to the fact that the funds of the Receivership Division were used to pay for postage which was not an expense of the Division in March, 1932, and November, 1932, and that these funds were not returned until June 30, 1933, according to the entries on the Receivership books. Further, that during this period, there were 42 receiverships closed and that the refund of $1,628.23 did not revert to the receiverships to which it was originally charged.

MEETINGS OF ASSISTANT RECEIVERS

Your Committee had been told that at various times meetings of the Receivership Division were held and that the Assistant Receivers were called in from over the State to attend these meetings, and that they were principally political meetings.

According to the testimony of the officials of the Receivership Division the meetings were held at the following places on the dates shown below:

Governor's Hearing Room	March 17, 1932
Governor's Hearing Room	April 5, 1932
Linoma Beach, Ashland	September 3, 1932
House of Representatives Chamber	August 13, 1934

In his testimony (page 844 Lincoln Hearing) Mr. C. G. Stoll stated that two meetings were held in the spring of 1932, as all of the Assistant Receivers were not called in at one time.

Mr. R. H. Downing states (page 704 Lincoln Hearing) that the speeches at the meetings in the Governor's Hearing Room had to do with the problems that were facing them in the liquidation of failed banks and were restricted to business matters. Mr. Downing, however, stated that Mr. Geo. E. Hall did get up at the conclusion of the meeting and make a short talk about what a good governor Charles Bryan had been and how he was a friend of the centralized system of receiverships and that he thought it right and proper for those present to use their influence in Mr. Bryan's behalf in the campaign. When questioned as to whether Mr. Hall talked at other meetings of the Assistant Receivers, Mr. Downing said:

> "George was one of our prize speakers; he spoke at nearly all the meetings we had and probably talked at all the meetings."

According to the testimony, the meeting held on August 13, 1934 was to consider the drouth situation which was prevalent all over the

State of Nebraska at that time and was seriously affecting the work of liquidating banks. There were present, representatives from the Emergency Credit Land Office and the Reconstruction Finance Corporation.

We did not receive a satisfactory explanation or reason for holding the picnic and meeting of the employees of the Department of Banking; Receivership Division and Assistant Receivers at Linoma Beach on September 3, 1932. No specific need for the meeting was stated. Mr. B. H. Schroeder, assistant receiver of the South Omaha State Bank, stated (Omaha Hearing, pages 163 and 164) that he did not listen to all of the speaking at Linoma Beach and did not remember what the speeches were about. He did state that several officials from the Department spoke and he thought principally on conducting receiverships and along that line.

The meeting at Linoma Beach cost the receiverships in the process of liquidation at that time, approximately $1,100. Unless the other Assistant Receivers received more benefit from the meeting than Mr. B. H. Schroeder testified that he did, your Committee doubts whether the meeting was of enough value to warrant the expenditure. Meetings of Assistant Receivers could be worth while schools of instruction, but should not be perverted for political purposes.

INSURANCE AND BOND PREMIUMS

Prior to June, 1931, it was the practice of the Department of Trade and Commerce and the Receivership Division to write many of the surety and fidelity bonds through The Nebraska Bankers Association. The Nebraska Bankers Association received the benefit of the commissions on bonds written through it.

This practice was discontinued by Mr. Luikart and the commissions on fidelity and surety bonds were paid to twelve agents designated by Governor Bryan. Below is a list of the agents:

J. C. Byrnes, Columbus, Nebraska.
C. W. Douglas, Fremont, Nebraska.
Geo. W. Cowton, Grand Island, Nebraska.
Federal Trust Company, Lincoln, Nebraska.
Gordon A. Luikart Agency, Lincoln, Nebraska.
Lincoln General Insurance Agency, Lincoln, Nebraska.
E. H. Schroder Co., Lincoln, Nebraska.
Sweeney & Co., Lincoln, Nebraska.
Harry S. Byrne & Co., Omaha, Nebraska.
Edward A. Creighton, Omaha, Nebraska.
Harry Mollow, Omaha, Nebraska.
Walsh Bros. Co., Omaha, Nebraska.

We quote a part of Mr. Byrnes' statement relative to the bond commissions which he received:

Q Have you ever written any bonds for receivers or officials of the State Banking Department?

A I probably can explain that in this way:

I think it was in 1931 that my friend, Mr. Bryan, got in some road fight up in the north part of the State, and of course, Charley and I didn't always agree; and he patted me on the back after the row was over and he said, "Say, John, you go down and see Luikart and have him give you some receivership bonds. We have lots of them." I said, "All right." He said, "Tell him I said so." So I went down and saw Ed and told him what the Governor had recommended me to do. Well, he said, "You know these receivership bonds, they're written"—I think he said they were mostly written in the National Surety—"and those bonds don't expire until the receiver is discharged. The premium, however, is paid annually by the Banking Department."

"Now, he says, "if Mr. Bryan wants you to have the commissions, we can't disturb those bonds, but if he wants you to have the commissions I can see that you get some." Well, I said, "That's very fine."

So, I suppose, beginning a month or two after that I began to receive checks from the National Surety Company for commissions. The number of the bonds, I never kept track of that, because I wasn't the agent for the National Surety.

Well, I think the last—of course, it dwindled, because they were passing out and a good many of the receivers being discharged; and I think a month or two ago was the last check that I received, either $15 or $10; I am not positive.

The National Surety office, if they was subpoenaed, they would have those cancelled checks.

Mr. J. C. Byrnes also testified that he did not prepare any applications for bonds and assumed that the commissions which he received were complimentary on the part of the Governor, on account of the things he had done for Mr. Bryan in campaigns. It was brought out in the hearing that Mr. J. C. Byrnes was not licensed to write bonds for the National Surety Company.

Exhibit 42 (page 179) is a letter from Mr. Anton J. Tusa, associate of Walsh Bros. Co., Omaha, Nebraska, addressed to Mr. E. H. Luikart relative to the commission on a bond, and reads in part as follows:

"I would appreciate it very much if you could see your way clear to give me personally all the commission on this bond, so I can apply it on the reduction of the $133.00 deficit incurred in the last primary campaign. The commission on the $250.00 premium would be $75.00. However, this is just my suggestion. I leave it to you to decide which is the best way."

A letter dated October 29, 1932, written by C. W. Douglas of Fremont, Nebraska, to C. G. Stoll, also shows that politics seemed to be closely allied with the bond business he was doing for the Receivership Divison. We quote from this letter:

"I want to take this means of thanking you for this nice business and for the past favors. I trust that there will be more bonds of this nature from time to time and we will endeavor to give you the same good service.

"You may tell Mr. Bryan that the prospects for his carrying Fremont and Dodge County are mighty bright, but we are still working. The Roosevelt-Garner club is doing a good job of it in Fremont and throughout the county. It looks like a big democratic year."

Martha A. Schaefer, cashier of the National Surety Corporation, Omaha, Nebraska, stated (page 265 Lincoln Hearing) that from October 5, 1931, to October 18, 1935, J. C. Byrnes received $1,584.45 commissions from their company; G. A. Luikart received $590.38, and the Federal Trust Company of Lincoln received $403.36.

An examination of the records of 115 Judicial Receiverships showed that they had paid at least the following amounts for insurance and bond premiums from the creation of the receiverships to June 30, 1935:

Insurance Premiums	$ 12,637.04
Bond Premiums	28,318.93
	$40,955.97

During the period the 85 Administrative Receiverships have been in existence the following amounts have been paid for insurance and bond premums:

Insurance Premiums	$ 5,687.52
Bond Premiums	3,226.55
	$ 8,914.07

One can readily see that the amount of insurance and bond premiums paid on all receiverships is a tremendous sum and that the commission thereon should not be used for political purposes.

Your Committee recommends that insurance policies and bonds be written through local agents in the cities and villages where the receiverships are located.

It is the belief of your Committee that the writing of insurance policies and bonds through local agents would not cause the Receivership Division any more work than the method they were using. Our examination of the correspondence showed that the Receivership Division would write a bond with the National Surety Corporation and send a check for the premium to the National Surety Corporation, Omaha, Nebraska. In this same letter they would request that the commission on the bond be split two or three ways and give the names of the parties to whom the checks were to be drawn. The commission checks would then be sent to the Receivership Division and the Receivership Division would mail them with a receipt to the payees shown by the checks. These parties would then return the receipts to the

Receivership Division. The Receivership Division would in turn mail the receipts to the National Surety Corporation.

Surely it would be just as simple to write an agent in the locality where the receivership was located and have him write the bond, as it was to go through the procedure that was followed.

PUBLIC RELATIONS

When a bank fails and a receiver is appointed the depositors in that bank immediately take on a position entirely different than they held prior to the closing of the bank. As long as a bank is open and the depositors can withdraw their money at will they have no particular interest in the management of the bank. As soon as a bank fails, the depositors immediately become interested in every transaction of the Receiver, Assistant Receiver and their employees, for the action of these people will determine what proportion of their deposit they will recover. Realizing these facts one can readily see the vital importance of proper public relations being maintained throughout the Receivership Division.

Your Committee has heard considerable complaint about the Receivership Division and believes that a large part of this criticism is the result of improper public relations rather than actual grievances which would be warranted were all the facts known.

Many depositors of failed banks in Nebraska are not familiar with the laws governing receiverships nor do they understand the operations and functions of the centralized receivership system. The attitude of the Receivership Division has been one of secrecy whereas an effort should be made to make the depositor feel that his questions are welcome. It appears to your committee that the attitude of the Receivership Division has been to assume that depositors are antagonistic and to write defensive letters to them.

It would seem to your Committee that the officials of the Receivership Division have the attitude that depositors should only object in court if they are not satisfied with the way a receivership is liquidated. We quote from the testimony of F. C. Radke (pages 135 and 136):

Q Do you have the court's approval for the payment of any attorney fees?
A Ultimately, yes.
Q In what way, by specific court order or because you file—(interrupted).
A Not by specific court order; the reports are filed and if somebody wants to object, they can object at any time before the Receivership is closed, and before the Receiver is discharged the whole works is subject to review.

This same attitude is clearly reflected in the testimony of Mr. C. G. Stoll (page 80 Lincoln Hearing), which we quote:

Q There is one question that I omitted with reference to the sale of assets, with particular reference to the Malmo

bank. Were the assets and notes of this Malmo bank sold against the wishes of the depositors?

A Malmo?

Q Yes.

A I couldn't tell you.

Q You couldn't say?

A They had their day in court and they could have protested against the sale to the Department of the sale, and if they didn't take advantage of their rights it was not the fault of the Receiver. I think they figured that the amount of the bid received was ample and that the sale should be confirmed.

Q In other words, the depositors and their committee always have a right to come in at the confirmation of the sale and make any valid objections or any objections that they may have or see fit to make?

A Yes, sir.

Q They have their day in court, in other words?

A Yes, sir.

Your Committee realizes that legally this is true, but the attitude does not improve the public relations of the Receivership Division.

Mr. R. J. Vacek, who had approximately $46,000 on deposit in the South Omaha State Bank when it closed, testified (page 330, Omaha Hearing) that the Receivership Division tried to keep him and Mr. Buras, who had approximately $30,000 on deposit, and Mr. Hoffman, who had on deposit approximately $33,000 out of the Depositors' Committee meetings, and if it had not been for Mr. Larkin of the Depositors' Committee they would have been kept out.

Mr. B. J. Larkin, chairman of the Depositors' Committee, stated (page 297 Omaha Hearing) that when the committee asked for an itemized statement of the attorney fees in connection with the South Omaha State Bank, Mr. Radke told him it was none of their business and they did not have to give them the statement.

More care and consideration given those who have been so unfortunate as to lose money in insolvent banks will create a better feeling over the State toward the Receivership Division.

DEPOSITORS' COMMITTEES

Early in his administration, as a result of dissatisfaction of depositors with past compromises and settlements, Governor Weaver authorized establishment of Depositors' Committees for each failed bank in receivership. These committees were originally elected by the depositors. This practice was later changed and Depositors' Committees are now appointed by the Receiver.

As soon as an Assistant Receiver is appointed to take charge of a failed bank he sends a list to the Receiver of depositors whom he thinks are qualified to serve on the Depositors' Committee, giving him what information he can secure about each one. From this list or from the

list and additional names if the Receiver asks for them, the Receiver appoints a Depositors' Committee of three or five which serve without pay.

The Depositors' Committee has no legal standing or real authority. The members are appointed by the Receiver and may be removed by the Receiver. The amount accomplished and how active the Depositors' Committee is depends wholly upon the Depositors' Committee. We have found some Depositors' Committees very active and others that take little apparent interest.

Exhibit 10, Wisner Hearing, is a copy of a letter written by Mr. Andrew R. Oleson of Wisner, Nebraska, to Mr. Barlow Nye, relative to the Receiver's appointment of the Depositors' Committee for the Wisner State Bank:

> "The personnel of the depositors' committee has received its due share of protest. Those talking to me have stated they have no voice in their selection. This I believe for the reason that I doubt if more than one would have received the slightest consideration at their hands, and it is doubtful whether even the one would have, judging from statements made."

It is the opinion of your Committee that it would be more satisfactory for the Depositors' Committees to be composed of three, one member to be appointed by the Court, one by the Receiver and the third member by the depositors.

The real purpose of Depositors' Committees, as we understand, is to aid the Assistant Receivers in making collections, to assist in determining when to sue to collect, to approve or disapprove proposals on the part of debtors to compromise their debts and assist with the sale of real estate. Their wishes are not conclusive in any of these matters.

We heard a great deal of testimony by members of Depositors' Committees complaining about settlements proposed by the Receivership Division, lack of cooperation, excessive attorneys' fees and many other matters. We also heard testimony by officials of the Receivership Division complaining of Depositors' Committees' refusal to accept compromise offers, that the Depositors' Committees thought they were in charge of the receiverships and forgot that the Receiver was really responsible for the liquidation of the bank and that they let out information about plans for collecting, etc.

It is the opinion of your Committee that much of the testimony we heard from the members of Depositors' Committees and officials of the Receivership Division about the actions of each other, is the result of the wrong attitude on the part of the Receivership officials as to their public relations with depositors and Depositors' Committees.

Your Committee received considerable complaint about Depositors' Committees not receiving a copy of the periodical reports filed with the Court and Assistant Receivers. For approximately eight months, it has been the practice of the Receivership Division to prepare an extra

copy of the report to the Court and Assistant Receiver and to file it with the Depositors' Committee.

ASSISTANT RECEIVERS

Only one assistant Receiver was called and his testimony rather surprised your Committee. There were so many questions asked, the answers to which, it would seem, would of necessity have to be known by the Assistant Receiver to properly carry out his duties, and still he replied that he was not informed as to the facts in these instances.

With more than 300 receiverships in the process of liquidation, we do not believe that 12 executives located at a central point can properly and efficiently supervise the liquidation of approximately $20,000,000 of assets unless their assistants are men to whom they can delegate authority.

Your Committee believes that Assistant Receivers should be appointed with the approval of the Court. This would eliminate any political influence being exerted in the choosing of Assistant Receivers, and we believe would result in more efficient liquidation of the receiverships.

STATE BANK OF STELLA

This is a going bank. Our depositions were taken with the consent and approval of the Board of Directors. Mr. Luikart owned fifteen shares of stock in the State Bank of Stella when the 1933 Banking Law went into effect on May 9, 1933, forbidding him to hold stock in a bank. (Sec. 8-1,122 C. S. Supp. Neb. 1933.) At that time this bank was in difficulty. He states that he could not dispose of his stock.

In the fall of 1933, Mr. Luikart and Mr. George W. Woods, Deputy Superintendent, suggested that the Board of Directors of this bank employ Mr. W. H. Rhodes as "Assistant to the President" at a salary of $200 per month. They advised the Directors that Rhodes was "not connected with the Banking Department and they recommended that we take him because he was available and a well qualified man, and they thought that he was just the man we should have here to straighten this bank out," that Rhodes "was well qualified and from his connection in Lincoln he knew he was a good man, and he said if somebody else got him, they couldn't place their hands on another man to take his place." "Mr. Luikart said he (Rhodes) had no connection with them but they were just recommending that we hire this man." Testimony of D. S. Hinds, Director, in the depositions taken at Stella, July 25, 1935.

On November 21, 1933, Mr. Woods as Deputy Superintendent, wrote the Directors (Exhibit 32, page 172), and stated that "the Department

now asks the Board of Directors to meet promptly and put into effect the following program:

> "1. Terminate the salary of Mr. Tynan (Robt. Tynan, President) as of December 1, 1933. Pass a resolution instructing Mr. Tynan to perform no further executive functions and particularly to make no contracts with borrowers who are being pressed for payment. Should any of these borrowers seek out Mr. Tynan he is to refer them to Mr. Rhodes.
>
> "2. No new loans are to be made unless they have the approval of Mr. Rhodes and the Board of Directors.
>
> 'Please furnish the Department certified copy of the resolutions and orders of the Board of Directors putting the above program into effect."

The examination made by the Department on September 19, 1933, shows that among the stockholders who held the then existing 500 shares of stock were "E. H. Luikart, Lincoln, Supt.," for 15 shares; Hazel Baum, Indianapolis, Indiana, for 15 shares; and Effie M. Hogrefe for 9 shares. Mrs. Hogrefe's address is not given. Mr. Luikart states as follows (page 25): "My son signed a note for $5,000 and got back 50 shares; and the old Hogrefe estate—my wife is a Hogrefe, and I inherited this—it had 45 shares, and Mrs. F. M. Hogrefe had 15 shares." Mr. Luikart paid his own $750 stock assessment with his personal check (page 22, Stella Deposition and Exhibit 10).

President R. A. Tynan testified (pages 3 to 6, Stella Deposition) that he was not well in November and December, 1933, and that he was told he was out of active control of the bank, but still its president, and that in December, 1933, he got a letter from the bank stating that "shareholders had decided that the Banking Department should levy an assessment of fifty per cent." No particular date was set for paying assessment, but Rhodes told him the assessment was payable about January 12, 1934. The Department had approved an assessment of fifty per cent for $25,000.00, the capital stock being formerly $50,000.00, and the funds from the assessment were to be used "to remove all the assets set up for elimination and still show capital stock in the amount of $20,000 preferred and $5,000 common and approximately $16,000 surplus and undivided profits as set out in the original application to the Reconstruction Finance Corporation for a loan on preferred stock." (Report of Conference on April 2, 1934; Exhibit 34, page 173.)

For an account of Mr. Rhodes' plans and activities as "Assistant to the President" of the State Bank of Stella, a letter dated May 17, 1934, from Mr. Luikart to Mr. G. F. Roetzel, Supervising Examiner, Federal Deposit Insurance Corporation, Kansas City, Missouri, contains a partial summary as your committee has found. This letter

(Exhibit 28, page 166) states: "I believe you are aware of the fact that W. H. Rhodes by schemes, threats and innuendoes induced a great number of the stockholders in this bank not to pay this assessment of 50% to the extent of $16,250. He paid this assessment by going to the Richardson County State Bank, borrowing a like amount on his personal note and placed the funds to the credit of the State Bank of Stella, which was used for the payment of assessments.

"All of this was unknown to the officers of the bank. They assumed that he had funds of his own with which to handle the transaction.

"When the preferred stock loan of $20,000 was paid by the RFC, it seems that the amount was deposited in some Kansas City bank and with this he paid off his note at Falls City, leaving but $3,750 for the bank's capital.

"Shortly after this transaction both our examiners and your examiner made an examination of this bank developing the situation as stated above. When I learned these facts Mr. Rhodes was immediately discharged and called upon to transfer the preferred stock certificate in blank, which transfer is in the possesion of the State Bank of Stella."

Auditor Basler states regarding the above facts that by a separate agreement between Rhodes and the Falls City bank, the "deposit in the name of the Stella bank (referred to above) on the books of the Falls City bank could be used for no other purpose than to pay the notes of W. H. Rhodes upon which the deposit was based, and not for the purpose of paying an assessment on capital stock." From report of August H. Basler, Auditor to E. H. Luikart, dated April 5, 1934 (Exhibit 91, Lincoln Hearing).

Mr. Luikart made the following answers to questions asked with regard to the acts of Rhodes (page 33):

Q Rhodes borrowed that money from the Falls City Bank, and when he sent the R. F. C. money down there he was paying the Falls City bank with money that he borrowed; paying his personal note with the bank's money?

A Yes, sir.

Q Well, when a man does that, is there anything criminal about it?

A Yes, sir.

The matter of time entered into the testimony regarding the acts of Mr. Rhodes at Stella. A letter from Mr. Luikart dated January 22, 1934, stated (Exhibit 29, page 167):

"I am enclosing herewith Certificate No. 205 for 15 shares of the State Bank of Stella stock for cancellation. In lieu of this stock will you please make out 7½ shares for G. A. Luikart and send the same to me, together with a memorandum of agreement that the preferred stock, after the government has been paid, will be divided in such a manner so that he will receive shares of stock and that Marion H. Luikart will receive a like amount, or a total of 50 shares.

"I wish to have a written memorandum relative to this so that it will be definitely understood. In this memorandum you may include both the children, setting out the shares they are to receive each, and sign as a bank official."

There are two things which need explanation in this letter. First, Mr. Luikart asks Mr. Rhodes to sign "as a bank official." Yet he testified that Mr. Rhodes "wasn't even an officer" of the bank (pages 17 and 18). Second, he asks Mr. Rhodes to give him the bank's statement that his children will receive 50 shares of preferred stock, although the letter states that his son, G. A. Luikart, is to get only 7½ shares of the capital stock. He states that the fifty shares are to be received by his children "after the government has been paid."

On page 83, Mr. Luikart explains the RFC loan, as follows:

"Now, when a bank takes preferred stock, we will say they have enough capital left to have $5,000 of common, and it is necessary to borrow $20,000 to maintain a capital of $25,000, the legal limit. $20,000 preferred and $5,000 common in this case we are speaking of. Until recently it took $25,000 in the state—you had to have $25,000 capital and $5,000 surplus to get a charter for a bank. Now, if a bank buys preferred stock, say for $20,000, if there are no arrangements made between the stockholders, those who retained their common stock are entitled to a pro rata of common stock when it comes back, and the preferred stock is transferred to common stock.

"Or, if they don't want any more common stock, you could go in, any of you, and sign a note for that levy which you would have to pay. You could take the preferred stock which you would have a double liability on, if you do that, or one party can sign the note and they all agree to take their pro rata share of liability and their pro rata share of the stock, or, each stockholder can sign the note for his given amount, if he wants to do that, but if there is no agreement between the stockholders, this common stock is secured when it comes back and is paid off, and they can by agreement allow themselves to take that responsibility of that stock, who want to, and the RFC will then abide by that agreement, and then they have got that stock according to that agreement."

He further stated such agreement could be filed with the application to the RFC or afterwards. He stated that there was no agreement at the Bank of Stella. Rhodes signed the note for the whole $20,000.

In response to questions of Attorney Radke, Mr. Luikart testified that (page 84) "if the RFC loan was paid off by earnings of the bank, and there was no agreement as to who should get the common stock to be issued in place of the preferred when it is retired, then the holders of the old common stock in proportion to their holdings would be entitled to receive the new common stock because they hold the stock of the bank, and the bank having the money they paid for it, they naturally would be entitled to the earnings." "If the person to whom the preferred stock is issued paid the lien off himself, then he would be en-

titled to something in regard to that in the common stock that would be issued in place of the preferred."

The testimony shows (page 32) that when the RFC funds were received on March 6, 1934, $11,000 of the $20,000 was sent to the Richardson County Bank at Falls City to pay off the balance of Mr. Rhodes' personal note, and on the same date, a charge of $6,250 was made to reimburse the Suspense Account for funds withdrawn February 9, 1934, and sent to Falls City bank to pay the notes of Wagner and Rhodes.

On January 31, 1934, Mr. Luikart as Superintendent of Banks signed and sealed a certificate stating that he officially approved "the plan of recapitalization of the State Bank of Stella by issuing preferred stock in the amount of $20,000 and reduction of the capital stock from $50,000 to $25,000, and have further approved writing down of elimination assets by the levy of 50% assessment on the old stock, of which a sufficient amount was paid to eliminate all objectionable assets of this bank." (Exhibit 27, page 166). (Underscoring is ours.)

The certificate, Schedule "T," on the RFC Application, which is (Exhibit 26, page 165), states that $25,000 in cash was paid on "January 10, 1934," to the "State Bank of Stella as a contribution by its stockholders; the same has been added to the capital structure of the Bank." This certificate was signed and sworn to by W. H. Rhodes, Assistant to the President, and Earl Wagner, Cashier, and was dated February 2, 1934.

In the testimony of F. C. Radke, General Counsel (page 92), Mr. Radke makes the statement that when W. H. Rhodes paid his personal note to the Richardson County Bank of Falls City with the funds of the Bank of Stella, it was Mr. Radke's personal opinion "that he was attempting to commit a fraud, perhaps on the creditors of the bank, and especially on the other stockholders of the bank." And that was his opinion "at the time you (he) heard the facts on April 2, 1934, as a member of the conference." He, like Luikart, made no report to a County Attorney or Attorney General. Mr. Luikart claimed it was because "the harm that was done, was undone, and the officers were advised of what he had done" (page 33). Mr. Radke said it was "his practice to try and recover what the bank has lost through the fraud" and that he did not think he has any duty to report the facts of a fraud to the Attorney General. That he paid no attention to the criminal side of it.

Testimony was presented to your Committee concerning a letter of February 16, 1934, written by W. H. Rhodes to E. H. Luikart. In this letter Mr. Rhodes states (Exhibit 31, page 169):

> "When in Lincoln last I gave you the stock line-up, the same as is shown in our final application to R. F. C. You have been so mighty good to me that I feel under great obligation to you. Mrs. Rhodes and I have talked matters over at length and we in turn want to do something by way of showing our

appreciation. We should like to have you accept 35 shares of the common stock which as you know, is paid for by reason of the assessment I put up. This, with the 15 shares you now hold, will make 50 shares, and when converted into preferred will be 25 shares, which can be divided equally between Gordon and Marion. Now, we do not want you to look upon this as being in any manner intended as a bribe. I think you know me well enuf to know I would no more think of offering such than I would of accepting one. We do feel a very deep sense of gratitude to you for the opportunity you have given me, and if hard work and fidelity to my job will accomplish anything, you will never have cause to regret putting me here."

Mr. Luikart says that when he received this letter, he "knew there was something rotten in Denmark," because he knew that Rhodes wouldn't have any shares to give him. That this was the first time he knew that Rhodes thought he had any interest (page 28). The certificate which Mr. Rhodes and Mr. Wagner signed (Exhibit No. 26, page 165) stated that the stock assessment was paid in cash on January 10, 1934. Mr. Rhodes wrote Mr. Luikart a letter dated January 11, 1934 stating the names of the stockholders who had paid their stock assessment with notes (page 79). On January 31, 1934, Mr. Luikart signed a certificate for the application to the Reconstruction Finance Corporation which certified that the assessment had been paid (Exhibit 27, page 166). Mr. Rhodes paid $16,250 of that assessment. However, if Mr. Luikart thought that the loan to Mr. Rhodes was genuine, we cannot understand why he thought anything was wrong when he learned that Mr. Rhodes claimed any interest in the stock upon which he put up the assessment.

In other words, your Committee cannot find any justification for Mr. Luikart's certificate of approval, signed January 31, 1934 (Exhibit 27, page 166). The application to RFC showed Rhodes had paid $16,250 assessment. As the actual head of the examining department, he had a duty to know how Mr. Rhodes "paid" his assessment and to forbid such practices. The letters between him and Mr. Rhodes are very friendly and indicate that they were in close touch with each other at all times during the negotiations for collection of the stock assessment and effecting the RFC loan on the preferred stock. He raised very little objection, if any, to Mr. Rhodes when he was put on notice by the letter of February 16, 1934, but permitted Mr. Rhodes to stay in charge of the bank until the RFC funds were received on March 6, 1934, thus enabling him to use the funds to pay off his personal note at Falls City. Besides, neither Mr. Luikart nor Mr. Woods required a bond or license for Mr. Rhodes, although they requested that the directors relieve the old officers of their duties and let Mr. Rhodes have charge of the note case and do all other important bank duties. Mr. Luikart did state when he was on the stand at a later time that he had answered Mr. Rhodes' letter of February 16, but he was unable to find a copy of his answer (page 75). He remembered that he had answered Rhodes, asking him "how he could possibly have stock to give to me. I knew he

couldn't afford to pay for it." He also said he tried to get some action from the Board of Directors without success. It must be noted here that it was the joint examination made by the State and Federal Deposit Insurance Corporation examiners that discovered the scheme (Stella Deposition, page 41). Mr. James, a director, complained to them during the regular examination on March 16, 1934. Up till then Mr. Rhodes "argued that it was strictly all right and that he was doing everything according to law in every particular" (Stella Deposition, page 40). Apparently what happened here was that the very thing that the law forbidding a Superintendent to own stock was intended to prevent, occurred, and the acts of the man who caused the trouble were thought to be done with the approval of the Department of Banking because of the stock ownership. And your Committee here as elsewhere criticises the failure to report the acts of Mr. Rhodes to the Attorney General.

COMPROMISE OF INDEBTEDNESS TO BANKS

When the Receivership Division believes that a debt to a trust can not be collected in full the debtor is permitted to make an offer to compromise his debt. The offer is made in writing and accompanied by a sworn property statement. It is then submitted to the Depositors' Committee. They consider the matter and make recommendations. Their recommendations are forwarded to the Receiver and if he approves them, an application is made to the court and included therewith as an exhibit are the recommendations of the Depositors' Committee, as well as the offer in compromise.

As to whether hearings are held upon compromises before they are approved by the court, Mr. Radke testified as follows (page 144):

> "Then the matter is submitted to the court and he usually examines the proposed compromise, with the various recommendations, and if he is satisfied with it at that stage he will sign the order; if not, the court asks for further testimony, and we often have hearings where testimony is taken."

Your Committee has heard a great many rumors and complaints about settlements and compromises. Due to the lack of time, we have not investigated them. Before your Committee could pass on the question of whether compromises were legitimate it would have to thoroughly investigate each compromise.

ASSETS SOLD AT PUBLIC AUCTION

There comes a time in the liquidation of each receivership when the collections are not sufficient to pay the cost of maintaining the receivership and when the probable future collections will not be sufficient to pay a dividend to the depositors. In order to wind up the affairs of the receivership the remaining assets are sold at public auction. Depositors' Committees are consulted before the assets are sold.

The assets to be sold are publicly advertised for several weeks in the locality where the bank closed. A list of the assets to be sold is pre-

pared and sent to the parties who indicate an interest in the sale. All available information concerning the assets is furnished prospective buyers upon request.

At the time advertised, the assets are put up at public auction and sold to the highest bidder. Due to the fact that the highest bid is often later raised, the court is not asked to confirm the sale immediately. When it becomes apparent that no higher bid will be received, the terms of the sale are sent to the court to be confirmed or rejected. Any depositor or bidder who is not satisfied with the sale has the right to make objections to the court.

Word has reached your Committee that the public sales have not in all cases been properly conducted and that enormous profits have been made by those purchasing the assets. We quote from the testimony of R. H. Downing, who has conducted many of these sales (page 357 Lincoln Hearing):

> Q What has been your experience with the bidders at these sales; have they been mostly the same parties at every sale?
>
> A No, they have not. Now, I don't like to say anything in the testimony that might be harmful to further sales, but the facts are that there is practically nobody in the game of buying assests that was in it when I started in 1931.

Mr. Downing testified that at different times they encountered trouble due to the bidders getting together and trying to fix a price they would pay for the assets of a given receivership and who was to purchase them. This practice was stopped by offering the various assets in bulk first as well as individually.

It would appear to your Committee if the purchase of the assets of failed banks was a profitable business the same men would be buying the assets that originally did and the bidding at the public sales would be more spirited. The assets would also be sold at a higher price. The Receivership Division cannot justly be criticised for agreements made between purchasers of assets, if the Receivership Division is not a party to these agreements, and your Committee fails to find any evidence that such is the case.

ACCEPTING DEPOSITS WHEN BANK IS KNOWN TO BE INSOLVENT

A banking corporation shall not accept or receive deposits when it is insolvent, and if it does so, "the officer, agent or employee knowingly receiving or accepting or being accessory to, or permitting or conniving at the receiving or accepting on deposit therein or thereby, any such deposit as aforesaid shall be guilty of a felony." Penalty is imprisonment in penitentiary not less than one nor more than ten years. Sec. 8-147, C. S. 1929. This law has not been changed since 1922.

Attorney Radke states (page 108) that an investigation of criminal matters "would necessarily take my time and part of the receivership's

funds and I don't think the Department of Banking should be loaded with any of that kind of expenditure in order to prosecute someone which brings no money back into the bank."

Mr. Basler, Special Auditor, states (pages 801 and 802 Lincoln Hearing):

> "Probably every banker whose bank was closed took deposits after the bank was insolvent; there would be very few exceptions to that, but in this case (Citizens Bank of Stuart), while they were taking deposits knowing the bank to be insolvent, they were paying off $60,000 or $70,000 to a few depositors, probably half a dozen; they were paying them off by giving notes and mortgages out of the bank, and while they were paying off those few depositors, they were taking deposits from others—well, you might say they were paying off their friends while you might say, those who were not so near to them were making deposits in the bank when the bank closed."

This procedure, which is so well described by Mr. Basler, takes place on a small scale in any bank which is open, although badly insolvent. However, it may not be within the power of the bank's officers to stop it in other cases, and then it would be necessary for the Department to immediately close the bank to protect the equities of the then existing depositors.

Mr. Radke testified (page 109) that the protection given the depositors in case of violation of this law is that they can file claim for "preferential payment in full out of the assets of the bank prior to payments to other claimants." That the depositor would "be entitled to a rescission of the contract of deposit by reason of that fraud involved in the transaction practiced upon him by the bankers" for the "reason that when the bank received that deposit the officers knew that the bank was not only insolvent, but hopelessly insolvent." He further states that "we call them trust deposits, but they should be named preferential payments," and states that he has suggested to the court that such deposits be entitled to preferential payment. Your Committee states that the money cannot be recovered unless the money deposited can be identified in the hands of the receiver, or it appears that the funds coming into his hands were increased by that amount (Quin v. Earle, 95 Fed. Rep. 728). As the cash on hand and on deposit when the receiver takes charge usually does not amount to much, this is small protection.

The real protection for all depositors is for the Receivership Division to sue officers and directors personally and upon their bonds to recover for the benefit of all the creditors of the bank. There will be ordinarily very few depositors who can individually trace their deposits into the funds in the hands of Receiver and thus sustain their right to preferential repayment to them of trust funds.

Mr. Radke states (page 110) that the the officer of the Ragan bank, who was treasurer of the school district, which lost its funds in the Ragan bank, could be sued on his bond as treasurer of the school dis-

trict for negligence as a protection to the district. That had nothing to do with other creditors of the bank, but, if such suit could be brought against an officer of a school district who knowingly deposited funds in an insolvent bank, then why did not the Receiver sue on the officers' bonds to recover the losses of the bank's creditors due to the misconduct or negligence of the officers?

The Omaha National Bank as Successor Guardian to John S. McGurk, who was also President of the South Omaha State Bank, recovered a judgment against McGurk for funds deposited by Mr. McGurk as Guardian in his own bank fifteen days before the bank closed (Exhibit 66, page 200). This judgment was paid by the bonding company. To recover, the Successor Guardian had to prove that Mr. McGurk fully knew the financial condition of his bank when he made this deposit, and that in making such deposit, he did not exercise due care and prudence in disposing of said funds. Judge Hastings in his decision which was made upon the appeal from County Court, held that the statutory requirements of solvency were not upheld by the bank and Mr. McGurk was liable upon his bond. The employees of the Department of Banking were witnesses at that trial (page 112), and Mr. Radke states that he had Mr. Southard, his local attorney, draw up the decree dated September 26, 1932 (page 107).

In spite of the fact that Mr. Radke and Mr. Southard assisted the successor guardian to obtain this judgment against Mr. McGurk, which was paid by the bonding company which bonded Mr. McGurk as Guardian, still Mr. August Basler, the Special Auditor for the Receivership Division, testified that he called on the Receivership Division and on Mr. Southard in 1933, and learned that no action had been brought on Mr. McGurk's bond in favor of the South Omaha State Bank. The action was afterwards commenced by another attorney.

PREFERENCES TO FORMER DEPOSITORS

It is the Receiver's duty to institute an action to set aside any fraudulent preferences to former depositors (Sec. 8-1,127 in effect May 9, 1933, set forth in part hereinbelow). Mr. Basler stated (see above) that at Stuart, $60,000 of the assets of the bank were handed out to certain large depositors before the bank failed. With reference to this, Mr. Radke testified (page 142):

> "There are four different cases, the leading case in which the Supreme Court is, is Luikart v. Hunt."
>
> "In those cases—they were preference cases—that was the first attempt by a receiver to establish a law of preference in this state; that was a new subject that had to be briefed from the beginning up, and we had no precedents to go by in this state, and the result was a winning in the District Court, and then there was an appeal—the Harringtons were in opposition there—and we got a favorable action from the Supreme Court, and it declared new law in connection with that kind of a case. Now, the consensus of opinion seemed to be that there could

be no recovery in situations like that because of this item, that the transfer would have to be on the basis that the person getting the preference knew of the fact that the bank was insolvent, and that he was getting a preference, and that we would have to prove the fact. Now, we have that point settled."

In the case of Luikart v. Hunt, 124 N. 642, 247 N. W. 790, decided April 7, 1933, before Sec. 8-1,127 became law, Judge Goss held as follows:

"1. Banks and Banking: Insolvency: Receivers. 'Ordinarily a receiver takes charge of banking affairs where the bank left them and cannot generally, in absence of fraud, mistake, or violation of law, open closed transactions which would conclude the bank, if solvent.' State v. South Fork State Bank, 112 Neb. 623.

"2. : : Fraud. Where a bank is insolvent and its officers have committed a fraud upon depositors and creditors and have violated the law by disposing of its assets in anticipation of imminent receivership, the receiver may question the transaction.

'3. : : : An insolvent bank may not prefer a depositor by giving him a good note and mortgage taken from its assets in its note case in exchange for the depositor's certificate of deposit against the bank. In such a case the depositor is charged with notice of a fraud upon other depositors and of a violation of law and thus subjects his title to the note and mortgage to question."

Chief Justice Goss delivered an excellent opinion containing one passage that is hereunder set out in full:

"The functions of a bank are to receive deposits from its customers, to keep them safe, and to repay them when demanded and due. To compensate for this service the bank invests its capital and the money intrusted to it by its depositors. The integrity and the continued existence of a bank depend upon the good-will of the depositors. That good-will is secured and held by the idea and practice of equality of treatment of depositors with preferences to none. The legislature was so careful to protect the rights of depositors in the fund they create that, when a bank becomes insolvent and closes, the claims of unsecured depositors and holders of exchange have priority over all other claims, except taxes, and become a first lien on all assets of the bank. Comp. St. 1929, Sec. 8-1,102. The funds of depositors are received by a banking corporation with the knowledge and notice given by this wise principle of the law, not only to the officers of the bank, but to every depositor, that all assets of the bank, which are largely created by these deposits, will always be a fund subject to pro rata repayment to depositors, whenever the bank ceases to function as a going concern and to pay its depositors in the ordinary course of business. With such a spirit and understanding of the law, may the officers of a bank, knowing its insolvency, realizing that its receivership is imminent, thus prefer certain depositors over all others by the subterfuge of trading the best assests in the bank's note case for deposits, in some instances not yet due? We think not. To decide otherwise would be a manifest travesty upon justice. The mere announcement of such a rule would be at once an invitation to and condonation of recreant

and conscienceless bank officers. It would authorize and encourage them to plunder their banks and to carve out and apportion to a chosen few the choicest assets of the corporation, leaving to the other depositors and creditors little more than a myth or shadow to which they may resort for the payment of their claims. We reject the idea, and are of the opinion that the officers of the bank committed a fraud upon the other depositors and violated the law when they took the note and mortgage out of the bank's note case and traded it for Mrs. Hunt's certificate of deposit."

Judge Goss with true juristic fairness then states that:

"If within the limits of section 8-136, Comp. St. 1929, or if beyond that, by permission of the department, the bank might have rediscounted the note and mortgage to third parties. That would have been a lawful method by which it could have disposed of the note and secured cash to increase its depleted reserve without lessening its assets. But this transaction was entirely out of the ordinary course of business of a bank. The law and the facts put Mrs. Hunt upon her notice. We are of the opinion that, as a matter of law, she was charged with notice of unlawful act of the bank and of its fraud upon the other depositors, and so the district court was right in holding that the knowledge of Mrs. Hunt as to the insolvency of the bank was immaterial."

This decision in Luikart v. Hunt was handed down April 7, 1933, just one month before the 1933 Legislature's Banking Act containing Sec. 8-1,127 went into effect on May 9, 1933. From that date, there could be no doubt as to the right to recover assets from former depositors who had received part of the bank's assets in payment of their deposits. The Receiver's attorneys could have immediately commenced or prosecuted to successful completion many actions to set aside such preferences. For instance, the preference of Hugo M. Nicholson, the attorney for the Wisner State Bank for more than ten years before it closed, is one that action could have been brought upon to set aside. Mr. Nicholson assisted the bank's officers on Tuesday, November 10, 1931, to transfer away over $100,000 of their real estate (page 16, Wisner Hearing). The bank failed to open on Monday, November 16, 1931, at the instance of its own Board of Directors, and not by order of the Department of Banking. He testified (page 19, Wisner Hearing) that an accumulation of heavy withdrawals during a year or two before the bank closed made it impossible to continue operations. Also (page 31 Wisner Hearing), that for the last several years before the bank closed, probably with increasing severity toward the end, the bank had received from the Banking Department letters like (Exhibit No. 6, Wisner Hearing), which read in part:

"There is still a large amount of assets which should be eliminated from your bank and which, in our opinion, is sufficient to render you insolvent at this time. There has been entirely too much use of the bank's credit to finance the feeding operations of the Leisy family (officers and owners of the bank). This must be discontinued. There has also been too much of your paper repeatedly sold out to correspondent banks which

may be returned to you to the embarrassment of your in stitution." (Page 31, Wisner Hearing).

Now, knowing of these transfers being made by the bank's officers while their bank was insolvent, and of the increasing severity of the letters just before the close, the local independent telephone company, of which Harry E. Leisy, the President of the bank, was Treasurer, and Hugo M. Nicholson acted as attorney (page 17, Wisner Hearing), gave its check for practically the entire balance of the telephone company deposit of approximately $3,500, payable to Mr. Nicholson, and he applied this on his personal note for $10,000 which he owed the bank. He then gave the bank a renewal note for the balance of $6,700, payable June 10, 1932. This note he promised the Department Auditor he would pay (Exhibit 1-a, Wisner Hearing), which Mr. Nicholson now denies (page 15, Wisner Hearing). But when Andrew R. Oleson, the Receiver's attorney, criticised this transaction as an illegal preference, and attached the real estate of Hugo A. Leisy, the non-resident director, he was severely criticised by Department Counsel on February 18, 1932 for levying this attachment.

Then Mr. Oleson suggested his relations with the Department be ended, and it was then that Mr. Nicholson's law partner, Otto H. Zacek, was appointed attorney for the Receiver. Incidentally, Mr. Stoll, Chief of the Receivership Division, recommended this attachment to Mr. Radke, General Counsel (Exhibit 1, Lincoln Hearing), and after these lands were attached, Mr. Hugo A. Leisy of Ohio sent mortgages and deeds for this real estate for $160,000, which were recorded after the attachment was filed (page 51, Wisner Hearing). On March 2, 1932, Mr. Nicholson filed a claim for $7,500 for legal services for the bank before it closed.

This claim was not allowed by H. W. Campbell, Assistant Chief of the Receivership Division (page 747, Lincoln Hearing). Mr. Nicholson filed a petition in intervention appealing from this Receiver's ruling, which was not tried until April 14, 1934. In the meantime, Luikart v. Hunt had been decided and the Receiver's Counsel had authority and ample time for filing a supplementary pleading to request that the Court give judgment against Mr. Nicholson for the full amount of the $10,000 note with interest, and refuse to allow the preferential $3,500 credit on this note. The court withheld decision pending the filing of briefs. Briefs were never filed (page 23 Wisner Hearing) by either party and the decision had not yet been rendered by the Court when the sale of the remaining assets was held on May 10, 1935. These remaining assets amounting to $84,671.53 in bills receivable, including the $6,700 balance on the Nicholson note and $13,377.00 of other assets, were sold to the Home Finance Company, Fremont, Nebraska, for $515.00. Mr. Nicholson obtained his note back for a nominal sum, and as far as your Committee knows, there is still an action pending against the Receiver for $7,500 on Mr. Nicholson's petition in intervention.

The present law reads:

> Sec. 8-1,127, C. S. S. Neb. 1933.—"If, at any time within sixty days prior to the taking over by the Superintendent of Banks of a bank which shall later be declared insolvent, any transfers of the assets of such a bank are made to prevent liquidation and distribution of such assets to the bank's creditors as provided in this chapter or, if any transfers are made so as to create a preference of one creditor over another, then such transfers shall be null and void and the Superintendent of Banks shall be entitled to recover such assets for the benefit of the trust. (1933 p. 163)."

We cannot leave the subject of preferences without calling attention to the statement made by Mr. Basler, the Special Auditor, that there are other preferences that are worse than preferences made to depositors, because at least, a debt is owing to the depositors (page 805, Lincoln Hearing). Such other preferences are those effected by making unwarranted loans to financially embarrassed corporations which are operated by friends of the officers. The decree of Judge Hastings finds that Mr. McGurk owned 87% of the stock and Mr. Goddard owned 13% of the stock for which he had paid by giving an accommodation note to the South Omaha State Bank (Exhibit 66, page 200). During the last six months, this bank made many increases in the loans to corporations in which Messrs. McGurk and Goddard had stock and from which Goddard was drawing a salary. Many of these loans turned out as among the worst the Receiver had to collect.

The present law reads:

> Section 8-149, C. S. S. 1933, reads in part: "No director of a bank, nor a corporation in which an officer or director of the bank is an officer, or the owner of a controlling interest nor a partnership in which an officer or director is a member, shall be permitted to borrow any of the funds of the bank without first having secured the approval of the Board of Directors at a meeting thereof, the record of which shall be made and kept as part of the records of said bank." Penalty—Felony.—Fine not exceeding $1,000.00 or imprisonment in penitentiary not to exceed five years, or both.
>
> Persons who may be prosecuted are "any officer, director or employee of a corporation transacting a banking business under this article, or any examiner, or other person who shall violate the provisions of this section, or who shall aid, abet or assist in a violation thereof."

An amendment in 1931 enlarged the meaning of the statute so as to include a "partnership" so that it reads as stated above.

This statute should be further amended so as to include loans to corporations in which an officer or director owns less than "a controlling interest" or from which an officer or director draws any salary or other emoluments, or gifts, for it is not too much to state that such loans should have the approval in writing of the entire Board of Directors in order to protect them from liability to the bank for loss on such loans.

Section 8-151, C. S. S. 1933, has remained unchanged since 1923. It covers "stockholder, director, officer, agent or employee of bank" and "gift, or compensation or reward or inducement of any kind for procuring or endeavoring to procure any loan from said bank to any person," etc., or for procuring the purchase of property by said bank or permission to overdraw. Penalty $200 to $1,000 fine; County jail, six months to three years or both.

This is a criminal law and does not place civil liability on the directors as suggested in the paragraph last preceding. Apparently no investigation resulting in enforcement of criminal charges on this law has been made, to our knowledge.

We found where bank officers violated the requirements for sworn property statements on loans of $1,000 or more not adequately secured. This is covered by Section 8-152, which contains no penalty. We find many complaints by examiners that statements have been found to be false and many statements have not been checked against chattels when new statements were made in place of the old. For instance, the signed statements of the examiners stated that the bankers at the Wisner State Bank admitted the statements of some of the bank's debtors were false.

"WE TAKE THE BANK AS WE FIND IT"

"We take the bank as we find it" is a phrase which has been constantly before your Committee since the beginning of the investigation. We have read it in correspondence and heard it at public hearings. We are convinced that in the case of most of the receiverships it applies. But we do not think it should apply nor do we feel that it is a legitimate excuse for letting corrupt practices which have gone on in banks escape prosecution.

The fact that the Superintendent of Banks or the Department of Banking is the Receiver for insolvent banks does not relieve those in his employ in the Receivership Division from conducting the affairs of the Receivership in the same manner a local receiver would, were he appointed and if he had no connection with the Department of Banking.

Your Committee recommends that as soon as a bank is placed in receivership a complete and thorough audit be made of the bank's records for at least six months prior to its closing. This report will show any preferences which have been given depositors; whether or not any irregularities occurred which would make the officers liable under their bonds; evidence, if any, of liability of directors and a report upon the financial condition of each stockholder to be used in connection with the collection of the stockholders' liability.

Exhibit 1 in the Ragan Deposition is a copy of a letter written on July 14, 1931, by Geo. W. Woods, Bank Commissioner, to Mr. E. M. Cox, President of the Bank of Ragan. We quote therefrom:

"If you continue to receive deposits in this condition and then should later be unable to keep your bank open, you will lay yourself liable to criminal prosecution under Sec. 8010, page 15 of the 1929 Nebraska Banking laws, as compiled by this Department. Please re-read that section in order fully to appreciate the serious risk which you are incurring."

Had the Receiver known of this letter and studied the information furnished in the examiner's reports on the Bank of Ragan, he surely would have given the Depositors' Committee the cooperation they desired in the prosecution of the officers in this bank.

FILING OF RECEIVER'S REPORTS

Complaint from many sources reached your Committee relative to the filing of reports by the Receiver with the Court. During the public hearing at Lincoln we heard considerable testimony about when these reports had been filed. Since the testimony of different witnesses varied and it was difficult to draw a conclusion therefrom, we had the auditor for the Receivership Division prepare a statement showing the date the last Receiver's report was filed and also the date the report previous to the last one was filed. The statement is a part of the Lincoln Hearing and is identified as Exhibit 64 (pages 191 to 199). This statement shows that a report was not filed for a period of over two years in the case of many receiverships.

ADMINISTRATIVE RECEIVERSHIPS HAVE TITLE AS STATUTORY SUCCESSORS

It is not generally known why the Department of Banking holds the assets of the various banks for which it has been appointed Administrative Receiver by the Court without being subject to removal as Receiver by the Court. Your Committee would like to clarify this matter, if possible. Sec. 8-1,127 C. S. S. Neb. 1933, besides stating that "Upon the declaration of insolvency of a bank by the Superintendent of Banks, the Department of Banking shall thereupon become the Receiver and Liquidating Agent to wind up the business of that bank," also states: "and the department of banking shall be vested with the title to all of the assets of said bank wheresoever the same may be situated and whatsoever kind and character such assets may be, as of the date of the filing of the declaration of insolvency with the clerk of the district court of the county in which such bank is located." (Underlining is ours.) By such a provision, the Legislature has made the Department of Banking the statutory successor of such banking corporation. While a receiver is a mere officer of the court and is limited to the jurisdiction of the court, a statutory successor is an officer of the State with power to hold title to property in and out of the State. A corporation is an artificial person and must operate according to the permission granted to it by the State. The State through its Legislature may state

who shall be the agents of the corporation before it becomes insolvent, and also that a certain state official shall be the successor of the corporation to hold title to its assets and wind up its affairs after it becomes insolvent. This provision that the Department of Banking shall "be vested with the title to all of the assets" makes the difference. See Relfe v. Rundle, 103 U. S. 222, for a description of the rights, titles and powers of a statutory successor as interpreted by the United States Supreme Court.

STOCKHOLDERS' LIABILITY

The State Constitution, Article XII, Sec. 4, states that:

> "In all cases of claims against corporations and joint stock associations, the exact amount justly due shall be first ascertained, and after the corporate property shall have been exhausted, the original subscribers thereof shall be individually liable to the extent of their unpaid subscriptions, and the liability for the unpaid subscription shall follow the stock."

By a constitutional amendment (Article XII, Sec. 7) adopted in 1930, the provisions of the above section 4 "shall not be construed as applying to banking corporations or banking institutions." The amendment also states:

> "Sec. 7. Stockholders in Banks Individually Responsible. Every stockholder in a banking corporation or institution shall be individually responsible and liable to its creditors over and above the amount of stock by him held to an amount equal to his respective stock or shares so held, for all its liabilities accruing or existing while he remains such stockholder, and all banking corporations shall publish quarterly statements under oath of their assets and liabilities. The stockholder shall become individually responsible for the liability hereby imposed, immediately after any such banking corporation, or banking institution shall be adjudged insolvent and the receiver of said corporation or institution shall have full right and lawful authority, as such receiver, forthwith to proceed by action in court to collect such liabilities."

Since 1922, Sec. 8-154 C. S. Neb. 1929 has remained the same without amendment. It states:

> "8-154. Stockholder's Liability. Every stockholder in a banking corporation shall be individually liable to its creditors, over and above the amount of stock by him held, to an amount equal to his respective stock or shares so held, for all its liabilities accruing while he remains such stockholder. In case any stockholder shall sell, transfer or dispose of such stock, knowing that such bank is insolvent, he shall be deemed the owner of such stock, and liable thereon the same as if such stock had not been sold, transferred or disposed of; and such liability may be enforced whenever such banking corporation shall be adjudged insolvent without regard to the probability of the assets of such insolvent bank being sufficient to pay all its liabilities."

In 1933, Sec. 8-1,130 was passed by the Legislature providing in addition to the provisions of said Sec. 8-154 that "all banking corpora-

tions shall publish quarterly statements under oath of their assets and liabilities. The stockholder shall become individually responsible for the liability hereby imposed, immediately after any such banking corporation, or banking institution shall be declared insolvent, and the Department of Banking as Receiver and Liquidating Agent of said corporation or institution shall have full right and lawful authority, as such Receiver and Liquidating Agent forthwith to proceed by action in court to collect such liabilities."

Attorney Radke states with regard to the petition filed against the stockholders in the South Omaha State Bank that the action was filed "prematurely" (page 115). He also states that "the attachment (filed by Attorney Oleson against the real estate of a non-resident stockholder of the Wisner State Bank) couldn't have been successful, based on the stockholder's liability, because the action was prematurely brought and could not have been sustained" (page 123). He states (pages 124 and 125):

> "Previous to 1930, the election of 1930, the constitution provided that an action could not be brought until the bank was liquidated; then in 1930 an amendment to the constitution was voted and adopted, which provided an action could be brought immediately upon the appointment of a Receiver. We instituted several actions promptly, but immediately the question arose that such action was prematurely brought for the reason that stockholder's liability is a contractual liability, that the contract was entered into when the stock was purchased and issued to the person holding it, and that that accelerated remedy as provided by that constitutional amendment would be in derogation of the contract so that it would have the effect of violating the Federal Constitution which guarantees the obligation of contract. The Supreme Court said that the stockholders' contentions were correct, and that left us with many cases—the date of the decree was sometime early in 1933, I believe it was. Personally, I didn't agree with the Supreme Court on that. My contention is this, that the change merely goes to the remedy, that it does not deprive the stockholder of all of his remedy there and even though it may make it somewhat burdensome, yet it is not in contravention of the Federal Constitution. Therefore, I instituted another action and this is in the Supreme Court right now."

When asked why the stockholder's suit at Wisner was "prematurely brought," Mr. Radke stated: "It could not be brought, although there was a constitutional amendment suggesting that it could be." Your Committee wonders why Mr. Radke could not have properly filed this suit immediately after the bank failed inasmuch as the Supreme Court decision he mentions was not handed down until 1933. The Wisner bank failed September 16, 1931, and the only law he had to govern himself at that time was the Constitutional Amendment. Regardless of the eventual decision of the Supreme Court, it would not be premature for the Receiver to file suit against the stockholders immediately after any bank failed between the date the Constitutional Amendment went into

effect and the date of the Supreme Court decision, especially since such action would be in accord with what Mr. Radke believed the law to be. Of course, before 1930, when the Constitution was amended, it was necessary to abide by Article XII, Sec. 4 of the Constitution which made it necessary for the Receiver to wait until the "corporate property had been exhausted and the exact amount of liability justly due had been ascertained."

The petition against the stockholders of the South Omaha State Bank was filed October 23, 1931. For the same reasons as set forth above, Mr. Radke was not in accord with existing law in stating that this action was "brought prematurely." At least, he did not have any decision from the Supreme Court to indicate that such action was prematurely brought until 1933, long after he dismissed or put in judgment the actions against the stockholders of that bank. His belief is that the change merely goes to the Remedy. (Page 124.)

The matter of when the Receiver can commence these stockholders actions has always been important, especially because it is often necessary to start such an action in order to have a judgment upon which fraudulent transfers may be set aside.

The evidence showed that two stockholders of the South Omaha State Bank who had transferred their stock before the bank closed, had also been sued for their stock liability on the ground that they knew of the insolvent condition of the bank at the time of said transfers (Pages 112 to 114). They told your Committee at Omaha that the actions against them were dismissed because they told the representatives of the Department of Banking that it would not be possible for the Department of Banking to prove they knew the bank was insolvent when they made their transfers several years before the bank closed, without the Department of Banking admitting at the same time that it permitted the bank to remain open knowing the bank was insolvent. Mr. Radke testified that such action on the part of the Department would not excuse these stockholders (page 114). In that case, your Committee does not understand why the Receiver dismissed these actions against these two responsible parties, unless the counsel for Receiver was in error in the first place in making these allegations that the bank was known to be insolvent at the time of such transfers.

SALE OF ASSETS TO TRUSTEES

When sufficient of the depositors of a failed bank request that the assets of the bank be sold, the Receivership Division respects their wishes and offers the assets at public sale. Prior to the time of the sale of the assets, trustees are appointed by the depositor, and at the sale these trustees bid in the assets at what they believe them to be worth. If their bid is the highest, the settlement is made as follows: The receiver charges against the deposits of the depositors who signed the agreement, their proportionate share of the purchase price. Depositors who did not sign the agreement are paid a cash div-

idend in the same ratio as the sale price of the assets bears to the total of preferred claims. Depositors who did not sign the agreement have no share in any further liquidation by the trustee, but do share in any further collections such as stockholders' liability which may be made by the Receiver. The depositors who sign the agreement share in further collections by the trustees or by the Receiver.

Your Committee did not have sufficient time to make a thorough investigation of any of the instances wherein the assets of a bank were sold to trustees for liquidation. We present an outline of the methods used in such cases in order that you may be familiar with the procedure.

DIRECTORS' LIABILITY

Under Sec. 8-150 C. S. Neb. 1929, "every director who participated in, or knowingly assented to a violation of this section, shall be held liable in his personal and individual capacity for all damages which the bank, its shareholders, or any other person shall have sustained in consequence of such violation." This section sets limitations on the loans "directly or indirectly to any single corporation, firm or individual, including in such loans all loans made to the several members or shareholders of such firm or corporation, for the use and benefit of such corporation, firm or individual" at twenty per cent of the paid-up capital and surplus of such bank. It further provides that "in no case shall the total liabilities of the several stockholders of any bank to such bank exceed fifty per cent of the paid-up capital and surplus of such bank."

Special Auditor Basler testified (pages 754 and 755, Lincoln Hearing), that the test of an officer's liability was "pecuniary loss to the bank resulting from embezzlement, misapplication, abstraction, any unlawful dishonest act on the part of the officers or on the part of the persons bonded." He stated that you could not sue on the officer's bond for losses resulting from excess loans. When his attention was called to Sec. 8-159 C. S. Neb. 1929, he stated that he was "never able to get an opinion from any attorney that that could be done." He stated that he was on his fifteenth year of receivership work. Page 752, Lincoln Hearing).

Section 8-159 which has not been changed since 1922, reads as follows:

> "8-159. Improper Loan, Officer Personally Liable. Any officer or employee of any bank who shall willfully and knowingly violate any of the provisions of secs. 8012, 8013, (8-149, 8-150), of this article shall be liable under his bond for any loss to the bank resulting therefrom."

On (page 785, Lincoln Hearing), Mr. Basler testifies that directors who had taken title to assets charged out of the bank without putting an equivalent of cash in the bank, could be sued for the re-

covery of these assets for the receivership. And on (page 790, Lincoln Hearing), Mr. Basler changed his testimony and stated that you can recover from a director for excess loans made before the bank failed.

When discussing the matter of getting transfers set aside, Mr. Radke was asked if suit could not be filed against the directors on their directors' liability. (Page 151). He answered: "There could have been an attempt to but you know the success of those cases." He stated (Page 152), that suits were filed for excess loans at Callaway and South Omaha this year, and at Verdigre, maybe two years ago. These suits for excess loans were not against the directors, but were against the officers on their bonds. He stated (Page 152), that these were the only cases where he attempted to collect for misfeasance, except there will be one in Franklin County and another at Greenwood. "There might be some more."

Mr. Radke did refer the committee to a decision of Judge Eberly of the Supreme Court, in an action brought by a director against the Receiver for conversion of various assets which the director had turned over to the bank. This decision of State v. Farmers State Bank, 127 Neb. 139, sets out the court's reasons for denying the director's claim to a trust fund. The court states (Decision handed down May 22, 1934):

> "On a related subject in Merchants Bank v. Rudolf, 5 Neb. 527, 540, Lake C. J., in delivering the opinion of this court, employed the following language: 'In Morse on Banks and Bank ing, 90, 91, it is said that "The general control and government of all the affairs and transactions of the bank rest with the Board of Directors. For such purposes the board constitutes the corporation", and "uniform usage imposes upon them the general superintendence and active management of the corporate concerns. They are bound to know what is done, beyond the merest matter of daily routine, and they are bound to know the system and rules arranged for its doing." Again, on page 115: "Whatever knowledge a director has, or ought to have, officially, he has, or will be conclusively presumed at law to have, as a private individual. In any transactions with the bank, either on his own separate account, or where others are so far jointly interested with him that his knowledge is their knowledge, he and his joint contractors will be affected by this knowledge which he has or which he ought, if he had duly performed his official duties, to have acquired." Lyman v. United States Bank, 12 How. 225'."

There is also a decision of the United States Supreme Court in Briggs v. Spaulding, 141 U. S. 132, decided in 1891, in which the court states:

> "Directors of a national bank must exercise ordinary care and prudence in the administration of the affairs of a bank, and this includes something more than officiating as figure-heads. They are entitled under the law to commit the banking business, as defined, to their duly authorized officers; but this does not

absolve them from the duty of reasonable supervision, nor ought they be permitted to be shielded from liability because of want of knowledge of wrongdoing, if that ignorance is the result of gross inattention."

EXCESS LOANS AND INVESTMENTS

This subject has been partially covered under the subject of "Directors' Liability" above, but the investment by a bank in the bonds of one corporation in an amount exceeding its excess loan limit has not been discussed. Evidence was introduced (page 64) showing that the State Bank of Filley at the time it closed had a capital stock of $10,000.00 and a surplus of $8,000.00, and at the same time owned $16,000.00 of the bonds of the Fremont Joint Stock Land Bank and $14,000,00 of the Lincoln Joint Stock Land Bank. Mr. Luikart said the excess loan limit of twenty per cent of the paid up capital and surplus in Section 8-150 does not apply to the ownership of bonds in one corporation (page 64). When asked why a bank owning bonds is not in the same position as a bank owning the notes of one borrower, he stated that "You better ask the Comptroller of the Currency about that." He stated that he had not seen the opinion rendered by Attorney General Spillman and published with his other opinions (Exhibit 6, page 160). This opinion dated Sept. 27, 1928, and addressed to Mr. Clarence G. Bliss, Secretary, Department of Trade and Commerce, referred to "the amount of bills receivable issued in the way of Joint Stock bonds that may be carried by a State bank." It further states:

> "I believe such bonds are like the notes given by any other bank or corporation insofar as the right of any state bank to make loans upon them either directly or indirectly is concerned. Hence, no state bank should have to exceed 20 per cent of its capital and surplus invested in the bonds of any one Joint Stock Land Bank (See Sec. 8013, Comp. Stat. of Neb. for 1922—Same as 8-150 C. S. Nebr. 1929)."

Mr. Luikart then stated that he did not think "the Attorney General's opinions govern the Banking Department" (page 65). If the opinion states the law, we can see no reason why the Department of Banking should not be governed by the Attorney General's opinions.

REPURCHASE AGREEMENTS

Sec. 8-136 C. S. Neb. 1929 reads:

> "Any transfer of assets of a state bank in violation of this section, shall be void as against the creditors of such bank; and any officer or employee of such bank who does, or permits to be done, any act in violation of this section, and any other person who assists in the violation of this section shall be guilty of a felony." Penalty—Fine not more than $1,000 or imprisonment not more than five years.

The transfer referred to is a transfer "as collateral to its obligation of assets with a face value of more than one and one-half times

the amount of such obligation" without the written consent of the Superintendent of Banks.

Under date of November 19, 1930, the Omaha National Bank "loaned the South Omaha State Bank $135,000.00, taking as collateral bonds under repurchase agreement with a par value of $260,000.00, plus a few odds and ends of stock." President W. D. Clark of the Omaha National Bank in a letter to Mr. Watson of your Committee (Exhibit 24, South Omaha Hearing) states:

> "It is difficult, if not impossible, to put together the market value of these items at that particular time. They are all low grade in character, and while there are nominal quotes on most of them, it was undoubtedly a fact that the offering of five or ten bonds in most of these issues would have broken the market anywhere from two to three to ten or fifteen or more points. Obviously this was because of the lack of buyers, plus the fact that there were many uncertainties surrounding most of these situations. My guess is that a fair value, however, would have been between $175,000 and $200,000. This gave us a comfortable margin but one which was entirely justified in the light of existing conditions and knowing that we might have to liquidate the security to obtain payment of our loan inasmuch as the bank's condition was not good at that time. Starting in April, 1931, payments were made presumably from the sale of some collateral and in July and August of 1931, new advances were made offsetting some of the repayments."

It is apparent from Mr. Clark's letter that in actual practice, banks placed more importance on the actual value of the collateral at the time of the transfer, rather than the face or par value. The law was probably written with respect to notes and liberty bonds. It may not have been written in contemplation of the condition existing in the past few years when most bonds which would ordinarily sell at prices somewhere near their par value, were actually selling at mere percentages of par value. In such a situation, it was only reasonable for the loaning bank to require collateral securing their loans to correspondent banks in actual value of at least one hundred and fifty per cent of the amount of the loan. Otherwise, they could not help their correspondent banks with a loan, and at the same time protect their own depositors. But why they should use a "Repurchase Agreement" rather than use an ordinary Bills Payable or Rediscounts is not clear to your Committee, unless by calling this loan a Repurchase Agreement, they were able to take the transaction out of the rigid limits of the wording of this statute.

The evil of calling this transaction a Repurchase Agreement rests in the fact that if you admit that such an agreement does not come under the collateral limitation, then you have opened the door wide for the loaning bank to take unlimited quantities of the assets of the borrowing bank without restriction.

It will be apparent from examining the Dingwell Guardian decree (Exhibit 66, pages 200 to 202) that the Omaha National Bank as Suc-

cessor Guardian to Mr. McGurk recovered from him for the deposits he placed in his bank which was in unsafe financial condition evidenced by the fact that it had "pledged more than $250,000.00 of its assets in November, 1930, to secure from another bank (Omaha National Bank) an advancement of $100,000.00," and other evidence. The South Omaha State Bank closed August 14, 1931.

Mr. Radke stated (page 156) that in cases of violation of this excess collateral law you are entitled to sue in court and obtain the return of the excess collateral, "if it can be had, I presume."

SALE OF BONDS BY RECEIVER WITHOUT COURT ORDER

This subject should be introduced with the statement that the evidence showed that the former Secretary of the Department of Trade and Commerce, Mr. Bliss, in the cases we have examined, obtained court orders for the sale of bonds (page 62) and Mr. Saunders is obtaining court orders now (page 817, Lincoln Hearing). Mr. Bliss was a Judicial Receiver and Mr. Saunders is an Administrative Receiver. Mr. Luikart was both a Judicial Receiver and an Administrative Receiver. He stated (page 60), "I think I never got court orders, except for bonds on which there were no quotations or where we were cleaning up at the end of a receivership." His attention was called to the following opinion from Attorney General Good dated August 1, 1934, addressed to Robert H. Downing, Assistant Chief, Receivership Division (Exhibit 7, pages 160 and 161), which states:

> "You ask our opinion relative to the necessity of a court order to authorize the receiver of any insolvent bank to compromise a debt owing to the bank at less than the full amount. We believe that an order of the District Court should be obtained in every instance approving or confirming any such compromise.
>
> "In the case of judicial receiverships commenced prior to the 1933 act, the receiver is an officer of the court and has no authority except as it is expressly conferred by order of the court. The order initially made when the receiver is first appointed which is quoted in part in your letter of inquiry recognizes this limitation and requires the approval of the court for any compromise of debts or claims due the bank. That part of the order provides that the receiver is authorized to 'compound any and all debts and claims due said bank, subject to the approval of the Court as provided by law'. The phrase 'as provided by law' does not limit the requirement so as to necessitate an express requirement in the statutory law. The powers of receivers are so limited in the absence of any express statute to the contrary.
>
> "In the case of administrative receiverships, section 8-1,131, Compiled Statutes Supplement, 1933, is explicit that an order of court affirming the compromise is required. This is true whether the transaction requires the name of receiver or not, if he in effect controls the transaction.
>
> "In our opinion therefore, judicial orders confirming the compromise should be had in all cases to protect the receiver from claims of dissatisfied creditors."

Mr. Luikart stated that "this opinion here refers only to the compromising of a note in the trust; only that," and that it is "absolutely impractical" to get a court order for the sale of bonds (pages 61 and 62). He stated with reference to the sale of bonds of the Lincoln Joint Stock Land Bank to the bank direct without a court order that "in the case of the bonds I sold there were no notes. We never compromise a note for anything less than the face without a court order" (page 61).

Your Committee believes that the sale of its bonds directly to the Lincoln Joint Stock Land Bank at a discount should have been confirmed with a court order to avoid criticism. We regard a bond as a debt within the meaning of the court orders appointing Mr. Luikart as Judicial Receiver and of the statute making him the Receiver of the Administrative Receiverships. As the opinion of the Attorney General shows, the compromise of a debt would require a court order in either case. We doubt if anyone could legally maintain that the sale of a bond at a discount direct to the debtor is not a compromise. If such sale does not require a court order, then the path is clear for the Receiver to sell the bonds of any corporation to it at a discount without the order of a court. The evidence showed that there is a country-wide market for Joint Stock Land Bank bonds and a comparatively uniform price in existence at any given time, and that the price paid by the Lincoln Joint Stock Land Bank for its bonds was usually slightly higher than others were paying. If such was the case, we can see no reason why the Receiver should not have gone to the District Court and applied for an order expressly approving his said sales.

Mr. Ivan Hedge, Department Auditor, stated (page 312, Lincoln Hearing): "There are probably a couple of cases in the receivership that might now be open to question, that never had occurred to me before, that there was any question about court orders on the sale of bonds. I recall of 2 different blocks of bonds of a hotel at Valentine, Nebraska, where there was a hotel corporation, and the principal owner purchased the bonds from us—the corporation was not in receivership. A court order was not obtained."

A. B. HOAGLAND REPORT

An examination of the files of the Farmers State Bank, Genoa, Nebraska, disclosed that the report of A. B. Hoagland on this bank was missing. Exhibit 95, page 212, is a copy of a memorandum found in the file. Mr. Luikart testified (page 79) that he knew there was an audit made of the bank by Mr. Hoagland. Mr. Buell, Assistant Receiver of the Farmers State Bank, of Genoa, from February, 1929, to June, 1931, testified (page 3, Buell Deposition) that Mr. A. B. Hoagland made an audit of this receivership in January, February and March, 1931. Mr. Buell further stated that he has a copy of the audit report prepared by Mr. Hoagland.

Mr. Buell testified (page 7, Buell Deposition) that Mr. Hoagland told him at one time before his death that he had been requested by his superiors in the Receivership Division to change a page of this report, and that he had made the change requested. He further testified that he furnished the information from which the report was made and knew that the report stated the true facts before the change was made. Without the office copy of the report, your Committee cannot determine whether it contains the original page or the page as changed in the manner concerning which Mr. Buell testified as to his own knowledge. It was Mr. Buell's opinion, as stated in his testimony, that both Mr. Hoagland and he lost their positions with the Receivership Division due to the making of this report.

SALARIES

Mr. Luikart testified (pages 5 to 8) that an annual salary of $4,250.00 has been paid to him since January, 1935, when the new Superintendent of Banks came into office at a statutory salary of $4,500.00 per year. Before January 1, 1935, Mr. Luikart received $4,500.00 per year for administering all of the Judicial and Administrative Receiverships and for being Superintendent of Banks. Now he is receiving just $250.00 less per year for doing only a small portion of the work he did before, and at the same time is using the officials and employees of the Receivership Division and the offices in the State House for performing his duties. Your Committee believes that such a dual receivership system is causing an unnecessary expense to the depositors, and was not contemplated or intended by the Legislature when the laws under which Mr. Luikart served as a state official for four years were passed. Mr. Luikart now has 239 Judicial Receiverships in his charge. Mr. Saunders is in charge of 85 Administrative Receiverships.

The 1933 Banking Act provided in Section 8-1,124 (set out page 49) that "the Superintendent of Banks may employ such deputies, attorneys, examiners, and other assistants as he may need to discharge in a proper manner the duties imposed upon him by law." His duties are set out in Sections 8-1,123 and 8-1,127 to 8-1,139 to be the supervision of all banks, both those in operation and those in receivership. Section 8-1,124 sets definite limitations higher than which the Superintendent of Banks shall not go in the payment of salaries to his said employees. The limitation for "deputies, examiners or assistants" is that they "shall not receive in excess of $2,400.00 per annum," and the limitation for attorneys is "that the fees or salary of such attorneys, or firms of attorneys, shall not exceed the sum of $3,500.00 per annum." An exception is made as follows: "Provided further, the Superintendent of Banks may employ two chief deputies at a salary not to exceed $3,500.00 per annum."

Mr. Luikart stated (Page 50) that he did not understand said Section 8-1,124. He said that Stoll and Downing not being "assistants", "examiners", "assistant examiners", or "deputies", Section 8-1,124 does

not refer to them. As to attorneys, he stated (Page 51) that the section refers to the attorneys in the Lincoln office, and doesn't refer to "attorneys we hire outside". He stated that he didn't "doubt there were" attorney's fees paid to firms outside the office over the sum of $3,500.00 for one year of services. He had not asked for an opinion from the Attorney General on this matter.

The testimony (Pages 49 and 50) shows the following salaries paid for the year 1934:

Deputy Superintendents:

Merle N. Foster	$3,500.00
George P. Wilson	3,200.00

Officials of Receivership Division:

C. J. Aldrich	$2.700.00
H. W. Campbell	2,700.00
C. G. Stoll	3,999.96
I. W. Hedge	3,600.00
Robt. H. Downing	3,600.00
F. C. Radke	3,500.00
Barlow Nye	3,092.00

Records indicate that Assistant Receivers, J. E. Hasse at Columbus and B. H. Schroeder at Omaha, received $3,000 each in 1934.

In the case of the officials of the Receivership Division, the salaries are paid in the following manner: an amount which in every instance is not in excess of the statutory limitations is charged to Administration Fund No. 2 and later prorated to Administrative Receiverships for which the Department of Banking is Receiver. If more than that amount has been paid any employee, the additional sum is charged to Administration Fund No. 1 and later prorated to the Judicial Receiverships. Mr. Luikart and Mr. Radke contend that the Legislature has no mandatory control over the affairs of the Judicial Receivers, but can merely make recommendations in regard to same.

CONCLUSION

When it was known that a Special Session of the Legislature was to be called the Auditor of Public Accounts summoned your Committee to his office and requested that we file two separate reports on the investigation; the one taking up the matters of the Receivership Division and the other the Department of Banking. At the time this request was made we were preparing for the hearing at South Omaha, which was held on October 10 and 11, 1935. In order to prepare a report on the Receivership Division, it was necessary to hold a hearing at Lincoln which was done on October 17 to 23, 1935. The last part of the transcript of the testimony taken at the Lincoln hearing did not reach your Committee until November 1, 1935. Since that time, it has been necessary to prepare our report, which has caused us to work under pressure and perhaps to leave out some matter which would have been of interest to you.

However, we feel that we have included all of the more essential phases of the investigation of the Receivership Division.

Mr. W. J. Williams, former State Representative, who was appointed a member of your Committee by the late Mr. Wm. B. Price, your predecessor, has prepared an individual statement containing recommendations to the State Legislature, I understand. He is submitting his own separate report of recommendations. It is not a part of our report.

Respectfully submitted,

ELLSWORTH L. FULK, C.P.A.
Chief Examiner.

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THE TESTIMONY

A transcript of the complete testimony of witnesses E. H. Luikart, John C. Byrnes and F. C. Radke at the Public Hearing held October 17 to 23, 1935, in Room 1315, State House, Lincoln, Nebraska, commences on the following page. All relevant exhibits are printed therewith. The testimony dealt with the investigation and audit of all business transactions and activities of the Department of Banking, including its activities as Receiver and Liquidating Agent, of failed or insolvent banks, since January 1, 1930. Other witnesses were examined and other exhibits introduced, but lack of space prevents their reproduction herewith.

Your Committee was represented by:

Ellsworth L. Fulk, Chief Examiner.

B. Frank Watson, Attorney and Presiding Examiner.

W. D. Messenger, Assistant Examiner.

W. J. Williams, Special Investigator.

State Auditor Fred C. Ayres and State Accountant W. H. Pansing represented the office of the State Auditor of Public Accounts.

Counsel for the officials of the Receivership Division of the Department of Banking and Mr. E. H. Luikart were:

F. C. Radke, Chief Counsel, Receivership Division.

H. L. Holtzendorff, Asst. Counsel.

All witnesses were duly sworn by B. Frank Watson, Attorney and Presiding Examiner of your Committee, acting for the State Auditor. The testimony, including exhibits, was transcribed and certified to by a Shorthand Reporter, Dorsey D. Baird, officially appointed by State Auditor Ayres.

E. H. LUIKART,

after first being duly sworn, testified as follows:

EXAMINED BY

MR. WATSON:

Q Will you please state your name and address to the reporter?

A E. H. Luikart, 1945 South 26th street.

Q What is your present business, Mr. Luikart?

A I am judicial receiver of failed banks.

Q Do you have any other business from which you draw compensation at the present time?

A No.

Q How long have you been connected with the Banking Department of the State of Nebraska? Just give the approximate date, Mr. Luikart.

A About January 13 or 14, 1931.

Q What was the first position that you held in the Department?

A Well, I started as deputy secretary in 1931, January.

Q And later on was made secretary of the Department of Trade and Commerce?

A Yes, sir.

Q And how long were you secretary of the Department of Trade and Commerce? Or, first, do you know how long you were deputy secretary—the date?

A No, I do not.

Q Do you know about the date of your service in the Department of Trade and Commerce; approximately the month and the year of your service there?

A Well, it was from sometime in 1931; January I would say, to about the 10th, 1935, in January.

Q And during this time, as part of your duties as secretary of the Department of Trade and Commerce, were you receiver of many failed banks in the State of Nebraska?

A Yes.

Q Please state to the Committee the different classifications of those receiverships due to changes in the law.

A Well, when I was first appointed, the receiverships were administered by me judicially.

Q By that you mean you were appointed by the court to be the receiver?

A Yes. And then when this last law was passed, from that time on all banks were so-called administrative receiverships.

Q By that you mean that the Department of Banking was the receiver of those banks as a matter of law?

A Yes.

Q And since January, 1935, you have had nothing to do with these administrative receiverships?

A No, I have not.

Q But the court has not appointed your successor; no application has been made to the court to have a successor appointed in the so-called judicial receiverships?

A That is correct.

Q Will you please state to the Committee as to who have been your former employers, just in a general way, so that we can tell with what firms and banks, etc., you have been connected prior to your work for the State?

A Well, as an employee, I was cashier of the Kewanee State Bank & Trust Company, Kewanee, Illinois; and then in '28 I came to Lincoln, and I was executive vice-president of the Lincoln Loan & Trust Company.

Q Did you have any connection with any other companies? Have you been receiver of any other company before you became connected with the Banking Department—any kind of companies or with any business?

A Not receiver.

Q Or have you had any connection with any other company? We are trying to establish, for the purpose of the record, your business connections.

A Well, I have been in the banking business ever since I have been of age.

Q What other Nebraska banks have you been associated with?

A The Tilden State Bank, Tilden, Nebraska; the Meadow Grove State Bank, of Meadow Grove, Nebraska; and the Battle Creek bank at Battle Creek, Nebraska.

Q And then the Bank of Stella—you were a stockholder in that, but of course you held no position in that bank—is that true, Mr. Luikart?

A I was a stockholder there. No position.

Q Now, have there been any other banks in Nebraska with which you have been connected?

A For a short time I was interested in the Chadron State Bank, Chadron, Nebraska.

Q Well now, I am not confining my questions to just commercial banks, but I refer to any kind of banks, or building and loan associations, or joint stock land banks—

A Well, I have had stock in the Lincoln Joint Stock Land Bank, or I did have stock in that, and in the Fremont Joint Stock Land Bank.

Q What were the dates of your stock ownership in those banks?

A I couldn't tell you definitely. I bought some stock in the Lincoln Joint Stock Land Bank in about '29.

Q And how long have you owned that stock? Did you own that stock continually until today?

A No, no. I had sold all of my stock in the Lincoln Joint Stock Land

Bank in about July, 1930. There are still 6 shares of stock appears on the books in my name. I haven't got it. It has been sold and never been transferred.

Q Is that a part of your original stock holding?

A Well, I used to buy and sell that stock.

Q And that is a part of the—you don't know then when you bought these 6 shares?

A No, I do not.

Q When did you say you sold these 6 shares?

A Well, I would judge sometime in about July or August of 1930.

Q You don't know exactly?

A No, not definitely.

Q You know it was in the year 1930, do you; in July, 1930—you know that definitely?

A Yes. I bought and sold that stock off and on, and the brokers would transfer it, and I would give it to the brokers to sell it.

Q I see. Have you had any ownership of stock since July, 1930, in the Lincoln Joint Stock Land Bank, besides these 6 shares you speak of?

A I think not.

Q Right there I would like to ask a question as to whether the Lincoln Joint Stock Land Bank, because it carries the word "bank" in its title, comes under your Department of Trade and Commerce in any way?

A It does not.

Q Did it make any reports to your Department?

A None whatever.

Q Or to any other State agency?

A No, sir.

Q Why is that? Why should that be?

A It is a Federal—it is a semi-Federal bank. It is under the jurisdiction of the Federal government.

Q Well, as a resident of the State of Nebraska, it has to have permission to do business in the State of Nebraska, if it is a corporation, according to our general corporation laws, does it not?

A Well, I couldn't tell you about the joint stock land banks. I don't know.

Q Well, with particular reference to the matter of stock holdings, section 77-1437 of the Compiled Statutes of Nebraska for 1929 provides: That the "officers of every bank or banking association, loan and trust, loan, trust, or investment company, shall, on the first day of April of each year, make out a statement under oath, showing the number of shares comprising the actual capital stock of such association, bank or company; the name and resident (residence) of each stockholder, the number of shares owned by each, and the value of the shares owned by each, and the value of shares on the first day

of April, and shall deliver such statement to the proper county assessor, or if no such assessor, to the county clerk."

Do you know if the joint stock land bank—the Lincoln Joint Stock Land Bank—has complied with that provision of the statute?

A I do not.

Q Well, our investigator found that they had not, but we found that all the National banks of Lincoln, which are also quasi-Federal institutions, as the term is used, had made such statements of who their stockholders were.

Is there any reason why the Lincoln Joint Stock Land Bank should be excluded from that provision, that every bank should make such a report?

A I assume there must be some reason, but I do not know what it is.

Q Have you had any connection or received any financial return from the Lincoln Joint Stock Land Bank for services rendered for them prior to your connection with the Banking Department?

A Never.

Q Have you ever been a member of the board of directors of the Lincoln Joint Stock Land Bank?

A Never.

Q Have you ever met with the board of directors of the Lincoln Joint Stock Land Bank?

A I met with the directors of the Fremont Joint Stock Land Bank and the Lincoln Joint Stock Land Bank, whose directors meet jointly. We are now one.

Q Yes.

A They control the Fremont Joint. I have been a director in that bank since about, oh I should say 5 or 6 months perhaps.

Q Did you ever meet with them before the last 6 months?

A No, sir. You are talking about directors' meetings?

Q Directors' meetings, yes.

A No.

Q By that I mean all meetings of the directors as a whole, or of directors in part, with a part of the directors?

A We meet every Monday, every week. It is some 6 or 8 months since I was put on the Board. I have met since that time quite frequently.

Q Now, while you were secretary of the Department of Trade and Commerce did the Governor of the State of Nebraska at any time take an active part in the control of the Banking Department?

A Oh, when we would have difficult questions, like something more than ordinary, he would sometimes enter in.

Q Who was the Governor that appointed you the first time?

A Charles W. Bryan.

Q And has he been Governor all the time that you held your position as secretary?

A Except the last 10 or 15 days. It was 10 days about that I was under Governor Cochran.

Q That was in January, 1935?

A Yes, sir.

Q At the time of the change?

A Yes, sir.

Q Now, you state that he had charge of important questions.

The Committee, you know, from newspaper reports to the State Auditor, has discussed whether or not there should be a board in charge of the Banking Department, as distinguished from the secretary of the Department of Trade and Commerce being an appointee. How long were you appointed for to begin with?

A For his term—during his term.

Q How long is the term?

A 2 years.

Q Just his term of office?

A Yes, sir.

Q And then at the end of his term of office you were to get out and another political appointee would come in?

A They might.

Q Did he have the right of removal of you from office at any time during the 2 years?

A He did.

Q What is your salary at the present time in the Banking Department?

A $4,250.

Q And on a monthly basis how much is that, approximately?

A About $354.

Q The last 2 years they called you Superintendent of Banks rather than Secretary of the Department of Trade and Commerce, did they not?

A Yes, sir.

Q What was your salary as Superintendent of Banks?

A I believe it was $4,500.

Q Which is $250 more than you are drawing now—is that right?

A Yes, sir.

Q Now, since January a new Superintendent of Banks has been drawing $4,500 a year, has he not?

A Yes, sir.

Q How many banks are under your jurisdiction; how many judicial receiverships do you still retain as receiver?

A I would say about 235.

Q And is your salary charged to these 235 banks?

A It is.

Q And Mr. Saunders, as Superintendent of Banks, is receiver of the

administrative receiverships; but while you were Superintendent of Banks you were in charge of the administrative receiverships and the judicial receiverships?

A I was.

Q You had charge of all the receiverships that now 2 of you are in charge of?

A Yes, sir.

Q While you were in charge as Superintendent of Banks, did you receive any additional compensation over your regular salary for conducting the affairs of either the administrative or the judicial receiverships?

A No, sir.

Q Your total compensation from the Department was $4,500?

A Yes, sir.

Q How does it happen that you have not turned over these judicial receiverships to the Department of Banking, or to Mr. Saunders as your successor?

A What do you mean by that?

Q Well, there must be some reason why you have not given up these judicial receiverships. I have in mind the fact that when you became Secretary of the Department of Trade and Commerce you conducted extensive litigation throughout the State in which you asked the removal of the then judicial receiver, on the ground that you were the new head of the Banking Department, and that he was out.

A I was wrong.

Q What?

A The court said I was wrong.

Q But you became receiver of those banks just the same, didn't you, and Mr. Bliss did step out?

A He stepped out too soon, if he wanted to stay.

Q How did that happen?

A I don't know how that happened.

Q His legal division did order some compromise and agreement, did it not?

A Well, the Supreme court had not yet passed on the question.

Q Don't you use the same office force and the same assistant receivers in administering these judicial receiverships which Mr. Saunders uses as the Superintendent of Banks for the administrative receiverships?

A No. Mr. Saunders uses the same that I use.

Q Things equal to the same thing are equal to each other, aren't they?

A Well—

Q What particular duties are you following that Mr. Saunders could not handle in addition to his administrative duties?

A I don't know if I have any.

Q If matters are being handled better now with both you and Mr.

Saunders acting as receivers, do you think it would be even better if you had more receivers acting? In other words, is this matter of centralized receivership inefficient, or is the fact that it takes 2 receivers of benefit?

A No, I think the centralized system is a better system.

Q With 1 or 2 receivers? Do you think it would be better if there was only 1 receiver?

A It might be.

Q What is your opinion on that?

A It depends on the training of the men that you have in the department.

Q Beg pardon?

A It depends on the training and the ability of your men.

Q You don't intend by that question to reflect upon Mr. Saunders' ability, do you?

A Not at all. It would reflect on mine. Not at all; not in the least.

Q That is a variable quantity, isn't it—the ability of the man in charge of the Department of Banking?

A Somewhat, and the men in his Department.

Q And if you had a man of mediocre training in the Department of Banking, then there wouldn't be any question but what a great many legal receivers would be far superior to the centralized receivership system—isn't that true?

A Not altogether, no. The centralized receivership has the employment of competent and trained help. The supervision depends on their help. If he is a picker of good men, then that is one of the big items.

Q I yet do not understand what you would consider better, a single receivership or the 2 receivers as are now in charge of the receivership; which do you prefer; which do you think would be the best system?

A At the present time I prefer the two.

Q You prefer the two, without regard to whether it is the best system or not?

A (No answer recorded.)

Q Aren't you now in the same position that Mr. Bliss was in when he became Secretary of the Department of Trade & Commerce?

A Not the slightest. The court has decided that question.

Q Well, you were wrong in the contention you took then, when you spent all the State's money in trying to get Mr. Bliss—

A That's what I told you in the first place—that I was wrong.

MR. HOLTZENDORFF: I would like, Mr. Chairman, to make an offer and have it put in the record, if you will, right at this point.

MR. WATSON: I don't like to be interrupted, but what is your question?

MR. HOLTZENDORFF: I would like to have the record show

that Mr. Luikart, as I understand it, is appearing here as judicial receiver, and not in connection with any of the duties of the administrative receiverships. In other words, this investigation is not inquiring into the procedure of the District courts of this State. We want the record to show that, at my request.

MR. WATSON: There might be some contention that Mr. Luikart would not have to testify before a State committee authorized to investigate the Banking Department?

MR. HOLTZENDORFF: That is true.

MR. WATSON: Is that what you mean to indicate?

MR. HOLTZENDORFF: No, but he is here testifying. All I want is for the record to show that he is testifying as an officer of the court.

MR. WATSON: I see. Mr. Luikart is here at the request of this Committee to offer what he can in this investigation. The record will show that. As a matter of fact, Mr. Luikart would have no right to refuse the request of this Committee to testify as to his duties while he was the Superintendent of Banking, and other times.

MR. HOLTZENDORFF: No.

MR. LUIKART: At least, I am not refusing.

MR. WATSON: We appreciate that.

Q (Mr. Watson continuing) In the Bliss case, you went to court, in each of the courts in which judicial receiverships were being administered, and sought the dismissal of Bliss as judicial receiver, did you not?

A Yes, sir; I did.

Q And who were the attorneys for you in that matter?

A Mr. Arthur F. Mullen.

Q Of Omaha?

A By the way. He served without pay for either his legal services or expenses. He never was paid one cent.

Q You mean Arthur Mullen was attorney for Governor Bryan at that time?

A Well, he being head of the Department, you might say that is right. I employed him, however.

Q In your opinion, did your receivership duties ever interfere with your administration of the going Bank Department?

A No. As a matter of fact, it was helpful to some extent. It kept me in better touch with the whole situation.

Q If you would, I would like to have you discuss that question a little, as to the various good points on that and the bad points.

A We have a history of the banks while they are going, and then when they go into receivership you have this knowledge at the time or you have to gather the facts. You have to gather knowledge before you have it, of course, but you must have this knowledge, as I say.

Q Now, at the time of the failure of the South Omaha State Bank, were you in charge of the receivership department at that time?

A Yes.

Q In other words, you had a chance there for full cooperation between the officers of the receivership department and the examiners, the former ones and the ones who had closed the South Omaha State Bank?

A Keep in mind at that time that we also had a man who was or had been Bank Commissioner, George W. Woods, who for 3 years and about 2 months retained his position, and he did most of the active work with the going banks. Of course, we had some interest, but he had more active charge with the going banks, and I took—

Q When did he start his position?

A Under Mr. Weaver 2 years before my time.

Q And you changed your position when Bryan became Governor. What was the change in his position at that time?

A I think he was made a—

Q Deputy superintendent?

A Deputy superintendent.

Q Before that he had been Bank Commissioner?

A Yes, sir.

Q As deputy superintendent under you, how long did he hold that job?

A I think 3 years and about 2 months.

Q He was Bank Commissioner when he finally terminated his services, wasn't he?

A No, he was deputy superintendent.

Q When did he finally terminate his services?

A I think in February of '34, or the 1st of March perhaps it was.

Q Now, this Committee received complaints concerning the manner in which the State Banking Department, under your supervision, supervised the affairs of the State Bank of Stella. Depositions were taken at Stella on July 31, 1935, by the Committee. The evidence indicated that you had been a stockholder, owning 15 shares of stock, in the Stella bank for several years prior to 1934. Is that true?

A It is.

Q Under section 8-1122 of the Compiled Statutes of Nebraska for 1929, which was passed in 1933 and went into effect on May 9, 1933, it provides that the Superintendent of Banks shall not either directly or indirectly be interested in any commercial bank, savings bank, trust company, installment investment company, or building and loan association, doing business in Nebraska.

A That is correct.

Q How do you explain your ownership of that stock then at that time?

A I had owned it when I came into the Department, and after this law was passed I was unable to dispose of the stock.

Q Did you have any other bank stock that you were unable to dispose of at that time, that you had at the time the law was passed?

A In no going bank, no.

Q Did you make any effort to dispose of your stock?

A I did.

Q On January 1, 1934, did you still own that stock?

A Yes, I believe I did.

Q Was that after a stock assessment of 50 percent had been voted for the Stella bank?

A No. After that time I owned no further stock in that bank.

Q Beg pardon?

A I owned no stock after that assessment. I paid my assessment and gave up my stock.

Q You used your own personal check to pay the assessment?

A I did.

Q That cost you $750 on the 15 shares you had?

A It did.

Q Then what did you do when you gave up your stock?

A I had the new stock issued to my son, G. A. Luikart.

Q Did you regard him as the owner of that after that assignment?

A He is the owner.

Q Now, why couldn't you have made that assignment when the law was passed?

A Because he wouldn't care to pay an assessment, which we knew would likely come.

Q Beg pardon?

A Because he wouldn't accept stock in a bank in which there would likely be an assessment. In other words, he wouldn't like stock in a bank that wasn't doing well.

Q Did you regard that bank as such a bank at the time when this law was passed on May 9, 1933?

A Yes, sir.

Q What condition did you consider it was in in May, 1933? You wouldn't go so far as to say that the bank was in a state of insolvency, would you?

A Well, I think it was; bordering on it at least.

Q Well, that brings up the question that I would like to take up somewhere in this testimony: whether you were able to close banks that you knew were insolvent?

A Well, sometimes I had a lot of difficulty about it.

Q Beg pardon?

A Many times I had a great deal of difficulty.

Q What do you mean by that? That it is difficult to tell a bank to close?

A That's one thing.

Q Why?

A Because it's difficult to tell values at these times; what bank is able to tell what their stuff is worth?

Q Well, that is always a difficulty in the matter of examining banks, to determine the true value of the assets, but—

A But not in normal times it isn't difficult.

Q Not in normal times.

A At the time that we had stable values.

Q There's been a lot of testimony in these cases that goes back to the year 1931, at which time there were a great many insolvent banks, which the Department knew to be insolvent, and some of them had been insolvent for a couple of years, I guess; at least, from the statements from the examiners in the reports; and those banks were not closed; they were allowed to stay open. And then we have the testimony in the case of the Ragan bank, where the officer of that bank received a letter from Mr. Woods, dated July 14, 1931, stating that the bank was insolvent under 2 of the statutory definitions; and he didn't know but what if he permitted the bank to remain open, he was allowing the banker to prefer former depositors to the detriment of new depositors. And he told him that if the bank eventually failed that the officers would be liable to criminal prosecution under a certain law, and he set out the number and the page of the law in the Banking Laws, and asked the officers to read it. And in that particular case, the officers went down to the county treasurer and got the school fund—he was also treasurer of the school fund—and brought these funds up to the bank, taking them from the county where they were secured and put them in the bank without security, and these school funds were also lost, along with the funds of other new depositors who were putting money in the bank.

I am telling you these facts, which can all be verified by our Ragan report.

Another point there was that the bank did not close for about two and a half months after Mr. Woods wrote that letter, and the examiners' reports had said that for a long, long time there was no use in saving that bank, because of the competition against it, even if the assessments were paid, which would be almost impossible, by the stockholders; that the bank could not survive because of the competition from other banks.

Now, what was the point of leaving a bank open like that, and injuring the new depositors, whose deposits were accepted by the bankers knowing that their bank—well, they knew that their bank was insolvent under that section of the law, 8-147 Compiled Statutes of Nebraska for 1929?

A Well, you know there is always the hope that they will recover; hope that they will pay their assessment and restore the bank.

Q Well, Mr. Luikart, you realize this is a Legislative Committee and you know that the Legislature made those laws, and with your own experience with Legislatures, I think you know that when these laws are made that they intend for the laws to be enforced.

Now, isn't it the duty of the Banking Department to either have those laws changed or to make a bona fide effort to enforce them?

A Well, of course, that depends on so many phases and angles of the situation in connection with each particular bank.

Q And in 1930 times hadn't come to the stage that they were in 1932, and even in 1931 we had a little rally in the spring, and we could hardly call those such times as would permit National conditions or State conditions to have kept the banks open?

A Well, you know we were told that prosperity was just around the corner all the time, and we were watching for that corner. It's very easy to say now what we would have done then with our present knowledge.

Q I know that the hindsight is better than the foresight, and all that —

A Very much so.

Q But nevertheless, I cannot understand that a banking commissioner, trying to administer a bank, should write such a letter and tell the men that they are going to violate the law during the next two and a half months, but the Banking Department will let them take a chance at it if they want to take a chance.

A There's more in that than just what you state.

Q That's what I want you to explain.

A That is sent out to those men to bring them along and put their bank in shape and to pay another assessment, and to encourage the solvency of the bank by themselves through such a letter.

Q In other words, that letter was to spur them on. Well, similar letters were sent to practically every bank that was insolvent in July, 1931, were there not? We found a similar letter at Wisner, July 10, 1931.

A That was one of the methods of pushing the bankers up and getting them to put their banks in shape. The main duty of course is to preserve and not to tear down, if you can.

Q You were here when Mr. Stoll testified regarding the letter that he sent to State Senator Neubauer, stating that it was the policy of the Department not to prosecute bankers who took deposits knowing the bank to be insolvent, or for making excess loans, or to prosecute borrowers for selling property that had been mortgaged to the bank?

A Well, you mean criminal prosecutions?

Q Well, I don't know. He said it was the policy of the Department. He didn't say—

A Are you talking about criminal prosecutions or what?

Q Criminal prosecutions.

A Well, it was not the policy of the Banking Department to start criminal prosecutions.

Q Isn't it the policy of the Banking Department to report evidences of criminal violations to the county attorney?

A More naturally to the Attorney General.

Q Well, isn't it their province to do that?

A Yes, sir; if they think there is any chance of success.

Q Well, regardless of whether they think there is any chance of success or not— I wouldn't say unfounded evidence of criminal violations, but where there is a direct violation counter to the law existing at that time, isn't it the duty of the Superintendent of Banks or the head of the Banking Department to report such violations to the prosecuting authorities of either the county or the State, so that proper criminal action could be taken, but it shouldn't be a matter of discretion on the part of the Banking Department, should it? I should think it would be the duty of the Banking Department to make those reports to the county or attorney or the State's Attorney General.

A Now, what kind of a charge would you say if you think that is so?

Q Well, in the matter of making excess loans, for instance.

A That isn't a criminal thing.

Q Yes, it is a criminal thing.

A No.

Q Well, you mean there is no penalty in the statute for a violation of that law?

A Certainly. The penalty is that the directors are liable personally for the loss.

Q You mean there is no criminal penalty connected with the law on that?

A Making an excess loan?

Q You say "no"?

A I say I think not.

Q Take section 8-150 of the law, found in the Compiled Statutes of Nebraska for 1929:

"No corporation transacting a banking business in this State shall directly or indirectly loan to any single corporation, firm or individual, including in such loans all loans made to the several members or shareholders of such firm or corporation, for the use and benefit of such corporation, firm or individual, more than 20 percent of the paid-up capital and surplus of such bank"; and then lists various exceptions. Well, we might read those.

"But the discounting of bills of exchange, drawn in good faith against actually existing values, and the discount of commercial paper actually owned by the person negotiating the same, shall not be considered as money borrowed, and in no case shall the total

liabilities of the several stockholders of any bank to such bank exceed 50 percent of the paid-up capital and surplus of such bank;

"Provided, the total liabilities of the several stockholders of a cooperative bank to such bank may exceed 50 percent of the paid-up capital and surplus of such cooperative bank.

"Any officer or employee of any corporation transacting a banking business under the laws of this State who shall violate or knowingly permit a violation of the provisions of this section, upon conviction thereof shall be punished by a fine of not exceeding $500."

It's a criminal fine, isn't it?

A I don't know of one ever having been collected for an excess loan. In fact, I don't know of any case that was brought on that charge. The real penalty is that the directors are liable for the loan personally.

Q Yes. It says later on they are liable, and then in a following section it says they are liable on their bond for violation of the section. (Sec. 8-159.)

A Yes.

Q But that is a criminal matter. That is something that the county attorney should determine by a criminal action whether that penalty should be collected. Now, I will admit that the penalty is all out of proportion to the wrong. It should be a much larger penalty if it is a fine, because that is an excess loan and if they are subject to prosecution on that it would probably run into several thousands of dollars. But now, nevertheless, there is a provision in this law for criminal prosecutions.

A Yes, but do you think any Attorney General or county attorney would consider any loan or loss of $500? It wouldn't even pay the expenses of it.

Q That wasn't my question, but whether the Legislature was right in making that law. I don't know who wrote that law, and whether there isn't a better penalty, but the question is whether there isn't a criminal penalty connected with it.

A Sure, there's a fine.

Q You can see if you want to take the record that the reason you wouldn't turn these reports of excess loans over to the county attorney or the Attorney General is because the penalty was so insignificant in comparison with the wrong that it would be embarrassing to turn it over to the county attorney or the Attorney General, but that leaves it up to the Legislature; but as far as the criminal violation is concerned, evidence of that violation should be given to the proper State officers in the beginning, as well as evidence of any other criminal violation.

Now, I would say this in regard to the matter of taking deposits when they knew the bank was insolvent: We have found evidence in various cases where you did prosecute on that charge; and it is

rather difficult for me to see the consistency of prosecuting on that charge in some places and not in others.

A Now, I think you will find that that was done because you couldn't get other charges, although we knew there were other such charges, but we couldn't prove them. It's very seldom—

Q What kind of charges?

A Something you can convict on.

Q What kind?

A It's very seldom—

Q What kind?

A Oh, embezzlement or forgery or some real wrongdoing. I have got to call your attention to this situation now. Since 1930 or '31 it's pretty hard to tell when a bank was insolvent or solvent.

Q Why didn't you try that on McGurk then at the South Omaha State Bank? You could have got him under this same provision, couldn't you?

A We tried him on several provisions.

Q He was only charged under one provision.

A He was acquitted.

Q He was only charged under one, wasn't he?

A I thought he was tried under 2.

Q There was only one count for his prosecution, if I am correct on that.

A It was my information that he was tried on 2.

Q He was tried twice on the same count. The first time it was a hung jury, and the second time he got an acquittal, but there was only one count.

A Well, it may be. I was thinking that there were 2.

Q There were 3 other indictments filed which were dismissed in January, 1934, on various other charges?

A Yes.

Q Now, take this case of the Stuart bank. You have sent the Flannigans up to the penitentiary for taking deposits while the bank was in solvent. That was one of the charges that they were charged on?

A Yes, sir.

Q Well now, why couldn't you get proof in that case on the other charges?

A The records had been destroyed.

Q Isn't there also another section of the statute that says anyone who destroys records shall be guilty of crime?

A There is now. There wasn't then.

Q We have gotten a long way from the Stella bank, but those are questions that have come up at various times, and I wanted your opinion on them.

(Thereupon at 11 a. m. a recess was called.)

AFTER RECESS 11:25 a. m.

Q (Mr. Watson continuing) There is one question that we over-looked this morning. How many receiverships is Mr. Saunders administering now; how many administrative receiverships are there?

A I think 183, about that; somewhere in that vicinity.

Q And then there was one other question in regard to the companies that you had been associated with.

I asked you if you had been receiver for any company before you took over your work with the Banking Department, and I understood you to say "No," or you didn't answer the question. Have you ever been receiver for a bonding company?

A Never.

Q What was your connection with the Lion Bonding Company?

A I was vice-president of that up until 1918, and sold out.

Q And then they sold out after that?

A Yes, in '18.

Q Did they go into receivership?

A About '23 I think it is sometime; 3 or 4 years later.

Q Did you have any connection with it after 1918?

A No.

Q Now, we will go back to the Stella matter.

Everyone in this room should know, when we are discussing this Stella bank, that it is a going bank. It is in splendid condition at this time, and we do not want anyone to misunderstand that point; and we do not want any statement going out that the Stella bank has failed. We certainly do not desire to in any way harm that bank.

Now, with regard to this file of correspondence that Mr. Rhodes left in the State Bank of Stella.

First of all, did you recommend Mr. Rhodes to go to the State Bank of Stella?

A I did.

Q About what time? Columbus Day, 1933?

A Sometime before that. We had a discussion there about somebody to go into that bank and collect in the slow notes.

Q Who was he?

A I had been liquidating the Lincoln National Bank and Trust Company about a year when I was appointed deputy superintendent of banks, and when I left that position we had to find somebody to do my work here to liquidate those assets, and we put Mr. W. H. Rhodes in as liquidator.

Q What was his business before that?

A Well, he had been I think down in Florida in a building and loan association for a number of years.

Q Do you know of any other business connection that he had?

A Well, he used to be in business in Omaha. I think he was with the City National Bank; I believe that that was his connection there.

Q Was he ever connected with the U. S. National Bank of Omaha?
A No. That's another Rhodes. It is spelled differently—R-h-o-a-d-e-s. The same initials, however, but it is spelled differently.
Q When he went down to take charge of the State Bank of Stella, which I believe—
A Just a moment. He didn't go down to take charge of the State Bank of Stella.
Q Well, just state. Go ahead and tell that story of the State Bank of Stella. I think I would save a lot of time to have you tell it in your own words.
A Well, there was need there of getting somebody to put that bank in shape. The president of the bank, Mr. Tynan, had been in bad health for probably about a year or such a matter and was not active, and the bank was constantly getting in a little worse shape, and were not getting securities, etc., and the bank was getting into an insolvent condition. So we suggested that Mr. Rhodes, who had done this work in my place at the National Trust Company here and had done a very good job and had finished there, it occurred to me that he would be a good man for this kind of a job. He was a good collector and had had experience, and I suggested him to these men. And then I think they came up here and met him, some of them, and he went down there; and they planned to put him in as assistant to the president.
Q An officer of the bank?
A No. Assistant to the president.
Q Well, the president was an officer of the bank?
A He was.
Q Just explain the full legal status there of Rhodes as assistant to the president. Did you regard—was it necessary for Rhodes to have a license or bond for the bank?
A No.
Q Was he able to sign the bank's name and bind the bank?
A I would say not, only at the direction of the president. He simply was his assistant.
Q Well, who was the president?
A Tynan.
Q Well, he was home?
A Well, he was a good deal of the time there. I think he was.
Q Well, Mr. Rhodes was able to sign the bank's name in these deals, was he?
A Yes, sir.
Q He signed the application for the R. F. C. loan?
A Well, I imagine some officer of the bank did.
Q Rhodes and Wagner did?
A It was some officer of the bank.
Q You approved that application and the loan was put through?

A Certainly.

Q Well, Rhodes signed it as an officer of the bank?

A Well, he may have, I don't remember that, because he wasn't an officer of the bank. He wasn't an officer of the bank; he says he wasn't an officer of the bank. He probably gave him authority to sign drafts and things of that kind. I suppose that he did; I don't know.

Q We had a photostatic copy made of the application, with Rhodes' and Wagner's names on it, as officers, and it has been mislaid. I have a copy in my personal file. We will just make a record of that later.

Well now, when Rhodes got down there you voted a stock assessment, or he did, didn't he?

A He couldn't do that.

Q Well, who did?

A The directors have to do that.

Q Just state about that. Just tell about that stock assessment.

A The way that's done, the Banking Department, they levy an assessment for a certain amount and ask the directors to vote that; and in this case they were asked to levy an assessment of 50 percent, which was done, and it was effected down there, in which some paid and some did not.

Q Well, did Rhodes make a special effort to get stockholders to surrender their stocks?

A Well, they would surrender—no, no; they would pay an assessment of 50 percent.

Q Now, just explain that. But if they surrendered their stock, or did not wish to pay the assessment, they would assign that over to Rhodes as a private sale, so-called, and he could pay the assessment and take over their stock; isn't that the way it was worked?

A If he agreed to; if they wanted to give it up.

Q Well, did he make a special effort there to get people to surrender their stock?

A Well, it appears now that he did. I din't know before.

Q When did you first find it out?

A I think I found it out when we had the directors up here at the Department, at which time they told me about his manipulations down there, and that was one of them; he was attempting to get this stock surrendered and apparently take it over himself.

Q Now, isn't it a fact that Mr. Rhodes had frequent conferences with you in Lincoln and considerable correspondence with you with regard to every phase of this stock assessment?

A There wasn't any phases to it. It was just simply a matter of assisting in collecting the assessment. There wasn't many phases to that.

Q Here is a letter of December 13, 1933. This is a copy of a letter from Mr. Rhodes to you. He says:

"Dear Ed: I am hoping and planning to spend Sunday in Lincoln, arriving late Saturday afternoon. Shall try to get in touch with you later on by 'phone as would like to go over some matters with you before returning here on Monday. We will not leave Lincoln until about eleven o'clock that morning, so if you would rather not give me a half hour Sunday, perhaps you can do so Monday morning early. If you wish to designate a time, please advise me either here or care of the Cornhusker.

"Everything very quiet here. Looks as tho plenty of stock will be available to any one wishing to take it on. People certainly are off bank stock as an investment and who can blame them? But it is the time to "get in" I believe and even tho one must take more than he feels he should it may be the very best thing after all. Hope you will decide to come in for some more as there will be but few of us left after the "Clean up."

"Faithfully, W. H. Rhodes."

Did he write you that letter?

A I believe he did.

Q And here is a copy of Schedule T on the application of the State Bank of Stella to the R. F. C. for a loan.

(Same marked for identification as exhibit 26; and the exhibit just read, being the Rhodes letter, being marked as exhibit 25.)

It says: "Certification as required by Section 1, paragraph 5, Washington Resolution.

"We, W. H. Rhodes, Assistant-to-the-President, and Earl Wagner, Cashier, of the State Bank of Stella, Nebraska, do hereby certify that on the 10th day of January, 1934, the sum of twenty-five thousand ($ 25,000.00) dollars, in cash, was paid to the State Bank of Stella as a contribution by its stockholders; the same has been added to the capital structure of the Bank, and the obligations of the Bank on account of such payment is fully subordinated to the rights and claims of the owners of its Preferred Stock, depositors, and other creditors.

"Signed at Stella, Nebraska, this 2nd day of February, 1934. W H. Rhodes, Asst-to-the-President. Earl Wagner," Cashier.

And then the affidavit appears below.

Now, will you state here if that was a part of the schedule that you approved, being an application of the State Bank of Stella for a loan from the R. F. C.?

A I approved the loan.

Q And didn't Mr. Rhodes sign there as an officer of the bank?

A He signed, but he isn't there as an officer of the bank.

Q Well, how could a man sign his name there in that way and not be be an agent of the bank? He would be an agent of the bank, wouldn't he?

A You tell me.

Q Beg pardon?

A You tell me.

Q Well, you were in charge of the Department, and not I.

A Well, but—

Q You approved that?

A Yes, sir; that application is all right.

MR. WATSON: I also hand the reporter for identification the certificate of E. H. Luikart, superintendent of banks as follows:

"I, E. H. Luikart, being the duly constituted authority having supervision of the State Bank of Stella, Nebraska, a State Bank organized and existing under and by virtue of the laws of the State of Nebraska, and having its principal place of business at Stella, County of Richardson, State of Nebraska, approve the plan of recapitalization of said bank by issuing preferred stock in the amount of $20,000.00 and the reduction of the capital stock from $50,000.00 to $25,000.00, and having further approved writing down of eliminated assets by the levy of a 50 percent assessment on the old stock, of which a sufficient amount was paid to eliminate all objectionable assets of this bank.

"Witness my hand and official seal at Lincoln, Nebraska, this 13th day of January, 1934.

"E. H. Luikart, Superintendent of Banks."

Seal attached.

(Same marked for identification as exhibit No. 27.)

Q Will you examine that and say if that is your certificate of approval?

A Yes.

Q Now, you state in there that a sufficient amount of assessment has been paid to take care of all objectionable paper. What did you mean by that?

A Just what it says.

Q How much of the assessment did you consider had been paid in full when you made that statement?

A 50 percent.

Q That is $25,000?

A That is correct.

Q And when you made that statement you thought that amount had been paid in cash?

A I was so advised and they had it in their accounts down there.

Q As a matter of fact, what had happened—well, how had the assessment been paid?

A Well, I have learned since that Rhodes borrowed the money from a bank at Falls City under an agreement that the funds were not to be used until such time as they would receive their R. F. C. money, with which he would pay this loan off. He, I understand signed the note personally and placed the money to the credit of the State Bank

of Stella. That is how that much money was raised—$17,250, I think; and Earl Wagner did the same thing for I think $1,000.

Q Now, how much objectionable paper was there under this plan, well, as a matter of memory?

A I would say something around $70,000.

Q And their old capital was how much?

A $50,000.

Q And new capital and new common stock was about how much?

A New common was about $5,000.

Q And the new preferred?

A 20.

Q And the preferred was to be purchased by the R. F. C.?

A Yes.

Q Now, this is a copy of a letter of May 17, 1934, from you as Superintendent of Banks, to Mr. G. F. Roetzel, supervising examiner, Federal Deposit Insurance Corporation, Kansas City, Mo., in which you go over the entire deal; and I would ask you to examine that letter and see if that is your copy of a letter you wrote, and whether it states facts as they occurred?

A This is my letter, and these are the facts as I believed them to be.

(Marked for identification as exhibit No. 28.)

Q You made the statement that Earl Wagner also was—that his note was included in this loan from the Falls City bank. Earl Wagner was the cashier of the Stella bank?

A He was.

Q Isn't it a fact that he gave his note, payable to W. H. Rhodes, to Mr. Rhodes?

A I understand that he did.

Q And Mr. Rhodes was the one that sold it to the Falls City bank without Mr. Wagner's knowledge?

A I don't know as to that.

Q But, at any rate, the note was payable to W. H. Rhodes?

A It was. I never seen the—

Q And turned it over to the Richardson County Bank at Falls City?

A That's my understanding. I never seen the note.

Q And this exhibit 28 states in the second paragraph:

"I believe you are aware of the fact that W. H. Rhodes by schemes, threats and innuendoes, induced a great number of the stockholders in this bank not to pay this assessment of 50 percent to the extent of $16,250. He paid this assessment by going to the Richardson County State Bank, borrowing a like amount on his personal note and placed the funds to the credit of the State Bank of Stella, which was used for the payment of assessments.

"All of this was unknown to the officers of the bank. They

assumed that he had funds of his own with which to handle the transaction."

"When the preferred stock loan of $20,0000 was paid by the RFC, it seems that the amount was deposited in some Kansas City bank and with this he paid off his note at Falls City, leaving but $3,750 for the bank's capital.

"Shortly after this transaction both our examiners and your examiner made an examination of this bank, developing the situation as stated above. When I learned these facts, Mr. Rhodes was immediately discharged and called upon to transfer the preferred stock certificate in blank, which transfer is in the possession of the State Bank of Stella."

And then there are other matters about the bank's business. Now, in simple words, this man Rhodes took his $16,250 note, representing the stock assessment on 162½ shares, to Falls City, to the Richardson County Bank, gave them his note and a deposit was set up on the books of the Falls City bank to the credit of the State Bank of Stella for the same sum of money, but not subject to—it was a fictitious—

A (Interrupting) Just one moment. It was an assessment on twice that number of shares.

Q Yes, on 325 shares. And the deposit was not subject to check. It was merely a fictitious credit which he set up as a genuine credit that belonged to the Stella bank when he made his application to the RFC for a loan and showed that this assessment had been paid in cash?

A No, that statement is not correct. It was a genuine credit, and they had the money in the bank; they had the money in the bank.

Q What was the use of borrowing money and leaving it on deposit in a bank?

A Yes, but that happened at Falls City and you couldn't recover their funds. That was that bank's funds.

Q I presume so, but didn't Mr. Rhodes give them an agreement that he would not withdraw the bank's money, and sign it as an officer of the Stella Bank?

A That wouldn't make any difference—that wouldn't amount to anything at all if that bank wanted to keep that money.

Q You would consider that the Falls City bank would be out of luck in that case?

A Absolutely they would; and I referred that case to them when I found this out.

Q The last part of Mr. Rhodes' exhibit 28, it states:

"I advised Mr. Wagner either to have the officers of the bank collect the balance of the assessment or sell stock to cover the shortage and told him if this were not possible, in my judgment, the Richardson County Bank of Falls City could be held liable for the shortage, for the reason that we have had a case similar to this

in every detail, where the officers of a State bank of Nebraska borrowed funds personally from the Stock Yards National of Omaha and afterwards paid this note out of the undivided profits of their bank, the Citizens State Bank of Lincoln."

Do you think that case is identical in issues with what happened at Stella?

A On all four's, yes, sir.

Q Was any action ever started by the attorney for the Stella bank to collect from the Richardson County Bank?

A Not to my knowledge.

Q How many times have you run across this very proposition, where an officer of a corporation gives his personal note to a bank, and has his deposit set up in the name of his corporation, but says his corporation will not withdraw it, and gives an agreement to that effect?

A Oh, I don't have any in mind that has happened before.

Q Can you give any instance of it?

A Well, the only one is the Citizens State Bank of Lincoln that I have in mind. There are no doubt many cases of the same kind.

Q In the case of the Citizens State Bank of Lincoln, as you state, their personal note was paid with money of the bank out of their undivided profits account?

A Certainly, which is the same thing.

Q But that did not say there was any agreement they were not to withdraw the money?

A I think there was. I think there was the same agreement.

Q Isn't that a rather facetious system, to permit a bank to show on its statement credits that have been obtained in any way and due the bank, and later when the people who rely on that statement discover what happens, they find out there wasn't any money there at all; just a fictitious credit, and requiring a lawsuit to collect it?

A There are other factors. That bank could have held that money.

Q It would have required a lawsuit to collect it?

A No doubt.

Q And then you might have a loss?

A Well, they didn't in this case here. They won't.

Q Well, we haven't yet the proof that this case is on all four's but it was a fictitious credit. When you put down in your statement, "Due from banks $25,000," you mean by that that there is due from banks $25,000 without any strings attached, don't you?

A Certainly.

Q Well, it was certainly when you get your deposit slip and it says "not subject to check"; that certainly is an agreement that the bank hasn't credited you anything? It's really just giving you a paper and saying that "we credit you something and don't credit you something"?

A That's correct, but the officers of the bank, I understand, saw that credit just as it was written and never did a thing about it.

Q That was the first that they knew about it, when the credit slip came through?

A Yes.

Q From the Richardson County Bank?

A Yes.

Q That brings up the question that I asked them down there: Well I said, "What was your opinion; what did you do about these matters where Mr. Rhodes did these things that you did not approve of?" Well, they said that he was put in there by the Banking Department because he knew what he was supposed to do. They said that they had that idea.

It's rather childish, isn't it, when a man does things like that right under their noses?

Isn't there evidence that Mr. Rhodes took that attitude?

A I think that he did, but I didn't—

Q And got them in trouble with the Banking Department for dereliction of duty and things like that?

A I understand that was said before, but I never had any knowledge of it and never knew of such a thing.

Q Now did you write in a letter of January 22, 1934, to Mr. W. H. Rhodes as follows:

(Letter referred to identified as exhibit No. 29.)

"I am enclosing herewith Certificate No. 205 for 15 shares of the State Bank of Stella stock for cancellation. In lieu of this stock will you please make out 7½ shares for G. A. Luikart and send the same to me, together with a memorandum of agreement that the preferred stock, after the government has been paid, will be divided in such a manner so that he will receive shares of stock and that Marion H. Luikart will receive a like amount, or a total of 50 shares.

"I wish to have a written memorandum relative to this so that it will be definitely understood. In this memorandum you may include both the children, setting out the shares they are to receive each, and sign as a bank official.

"Yours very truly, E. H. Luikart."

A letter to that effect was among Mr. Rhodes' correspondence, and was copied by the bank officials down there. They all, on sworn testimony, stated that this was a true copy of the letter that they copied, which was from you, and that they knew your signature, and they produced the letter.

Now here is a copy of it. I wish you would look at that and state to the Committee whether or not you wrote such a letter to Mr. Rhodes?

A I think that is correct.

Q Now, on this last exhibit, No. 29, there was a pencil endorsement at the bottom—"Ed: You forgot to endorse the cf" (meaning certificate) "Been about three-fourths laid up with cold, but will write you later Faithfully, W. H. R."

Did he write that on the letter and send it back to you, as you remember it?

A Well, I rather think so.

Q Just look at the copy of it.

A I think that the certificate was sent back to me for endorsement, and that was probably on there.

Q Now, what did you mean by the statement: "..send the same to me, together with a memorandum of agreement that the preferred stock after the government has been paid, will be divided in such a manner so that he (referring to Gordon) will receive shares of stock and that Marion H. Luikart will receive a like amount, or a total of 50 shares"?

A I meant just this: When you sell stock to the RFC, the stockholders, if they want to, are allowed to get back their pro-rata share of the preferred stock when it is redeemed, or more if they pay more of the assessments or want to take the responsibility for the preferred stock. The person who takes the resposibility can enter into an agreement with anybody else that when the stock is redeemed he will distribute to the person he agrees with a certain number of shares.

Now, in this case, Rhodes signed the note to the RFC, and the RFC, allows the interested parties, if there are any, to an agreement to receive back a certain number of shares, or the person can sign a note for that amount. And my son signed a note for $5,000 and got back 50 shares; and the old Hogrefe estate—my wife is a Hogrefe, and I inherited this—it had 45 shares of stock in this bank; the daughter, Mrs. William Baum, had 15 shares, and Mrs. F. M. Hogrefe had 15 shares, and they didn't see fit to take the shares up and they cancelled their stock and lost it. I paid my 50 percent assessment. Now, I would have a perfect right to ask that when the stock is redeemed to get back at least 45 shares or more if anybody else wanted it, because they dropped out, and I could take somebody else's stock, or my son could or daughter could. That is the tenor of that letter.

Q (By Mr. Williams) You mean to tell this Committee—I want to ask a question right here now. Do you mean to tell this Committee that this stock was paid for in cash?

A They paid the cash.

Q I know the record shows, signed by Rhodes and Wagner, that this stock was paid for in cash.

A It was.

Q Well then, do you mean to tell this Committee that after that you

figured that you had a right to come in and take some of this stock away from them?

A Not take it away from them. They issued it back to the old stockholders pro-rata under an agreement that may be made between stockholders. They issued the common stock to those people and reserved that stock.

Q Well then, if I went in on this deal and got part of that, they had a right to take part of it away from me?

A Not at all. The people who paid the money can recover the pro-rata share of the stock that they held.

Q Didn't they turn it in?

A Yes, sir; they did.

Q How can they turn the stock in?

A By agreement.

Q (Mr. Watson resuming) Was part of the stock considered as a part of the consideration for the preferred stock?

A No, sir.

Q Mr. Rhodes took the stock in his name, under the law, that made it necessary for him to take the preferred stock in his name?

A Yes, or a director or stockholder can sign that.

Q Well now, what were the names of those members of your family that had stock in the bank at the time?

A Hazel C. Baum and Effie M. Hogrefe.

Q And who else?

A And myself.

Q That makes a total of 39 shares?

A 45.

Q This report here of the September, 1933, examination shows Hazel Baum with only 15 shares?

A That is correct.

Q Effie M. Hogrefe with 9 shares, and E. H. Luikart, superintendent, with 15 shares.

A Well, I was under the impression that Effie Hogrefe had an equal amount—15 shares.

Q You didn't have the agreement of those people then that they would surrender their interest to you?

A No; and afterwards the mother-in-law and the sister-in-law and my son did not want to enter into it. They didn't want to take the responsibility of having that obligation for that stock. It never was consummated.

Q Did your son or daughter or any of your family have any interest in the bank at this time?

A My son has.

Q How much is his interest?

A Well, he has now 3.9 shares of common stock.

Q How is that figured out?

A Well, he had in the first place 15 shares, or I had, and he paid an assessment of 50 percent, and then he had his pro-rata share of $5,000 common, which is one and a half shares, and since has redeemed enough to get back 3.9.

MR. WATSON: Just identify this page from the report of September, 1933, with the list of stockholders.

(Marked for identification as exhibit 30.)

A That bank has paid enough back so that his common holdings are now 3.9. If they make recovery, by profits or otherwise, he finally will have 7½ shares.

Q (By Mr. Williams) Bob Tynan, president of the Stella bank, said that he made a trip to Indianapolis to see the people that you are talking about, and they told him that you told them not to take this stock.

A I did.

Q There wasn't any chance of the bank pulling out, you told them, didn't you?

A I didn't say that at all.

Q That's what they said.

A I told them that I didn't think that the stock was a good investment, and I still think so.

Q Just why wouldn't it be a good investment?

A Well, it just isn't.

Q Well then, why did you take 50 shares of stock in this bank?

A I reserved the privilege of taking the stock if I wanted to. It was never consummated; nothing of the kind was ever done.

Q You have told this Committee that Rhodes was not a bank official and wasn't an officer of the bank there.

A He wasn't.

Q Then why did you send him a letter and ask him on January 22 to sign as a bank official?

A He was to sign for the president.

Q That letter showed that you wrote him to sign as a bank official (referring to exhibit 29.)

A He was to sign for the president.

Q Wasn't the president of the bank kicked out at that time?

A I don't think so. I think he was still president. I think he was. On January 22, 1934, he was president.

Q (Mr. Watson resuming) Here is a letter in regard to this particular matter of those 50 shares. The State Bank of Stella also showed us another copy of a letter from Mr. Rhodes to you, of which we found the original in the Department files here.

MR. WATSON: I will ask the reporter to identify this letter of February 16, 1934, to Mr. Luikart from W. H. Rhodes.

(Same marked for identification as exhibit No. 31.)

This exhibit 29 states in the last part of it—or I will read the whole of it:

"I wish to have a written memorandum relative to this so that it will be definitely understood. In this memorandum you may include both the children, setting out the shares they are to receive each, and sign as a bank official."

You have seen statements, though, that he signed as a bank official, that Mr. Tynan did not sign, have you not?

A I don't recall any.

Q Now, in this exhibit 31 which we have just had identified, it contains at the bottom of page 1 the following statement—this is Mr. Rhodes' letter:

"When in Lincoln last I gave you the stock line-up, the same as shown in our final application to R. F. C. You have been so mighty good to me that I feel under great obligations to you. Mrs. Rhodes and I have talked matters over at length and we in turn want to do something by way of showing our appreciation. We should like to have you accept 35 shares of the common stock which as you know is paid for by reason of the assessment I put up. This with the 15 shares you now hold will make 50 shares, and when converted into preferred will be 25 shares, which can be divided equally between Gordon and Marion. Now, we do not want you to look upon this as being in any manner intended as a bribe I think you know me well enough to know I would no more think of offering such than I would of accepting one. We do feel a very deep sense of gratitude to you for the opportunity you have given me and if hard work and fidelity to my job will accomplish anything you will never have cause to regret putting me here."

Now, the bankers at Stella told us, when we took our depositions down there, that they tied this letter up with the letter of January 22, 1934, from you to Rhodes, in which you also mentioned 50 shares (exhibit 29.)

Have you any statement for the Committee on that?

A Yes, I have this statement to make: This is the first thing I received from Rhodes when I knew there was something "rotten in Denmark," because I knew that he wouldn't have any shares to give to me. He couldn't have. That's the first thing I knew that he thought that he had any interest.

Q That has nothing to do with the statement of 50 shares in your letter of January 22?

A Not at all.

Q Exhibit 29.

A But this is the first thing I knew there was something "rotten in Denmark," because I knew there was something amiss.

Q (By Mr. Williams) Tynan's testimony shows that he was removed from the bank December 1, 1933.

A Removed as president?

Q Removed as president, and his services were not needed any further, by letter that he received from Woods.

A I don't think he was removed as president at all.

MR. WATSON: Well, we offer in evidence the letter of November 1, 1933, from G. W. Woods, deputy superintendent of the Department of Banking, to the Directors of the State Bank of Stella, identified as exhibit 32.

(Same marked as exhibit 32.)

It reads as follows:

"Following a further study of the report of the examination of your bank as of September 19, 1933, and further taking into account the lack of progress and improvement shown by the bank during the past four years, the Department now asks the Board of Directors to meet promptly and put into effect the following program:

"1. Terminate the salary of Mr. Tynan as of December 11, 1933. Pass a resolution instructing Mr. Tynan to perform no further executive functions and particularly to make no contacts with borrowers who are being pressed for payments. Should any of these borrowers seek out Mr. Tynan he is to refer them to Mr. Rhodes.

2. No new loans are to be made unless they have the approval of Mr. Rhodes and the Board of Directors.

"Please furnish the Department certified copy of the resolutions and orders of the Board of Directors, putting the above program into effect."

Was that a copy of a letter from your Department?

A Well, I assume it is.

Q That was the understanding, was it?

A Oh, that doesn't put him out as president. He is still president of the bank.

Q Now, we have here a letter of December 28, 1933, to Mr. Luikart from W. H. Rhodes, which we will have identified.

(Marked for identification as exhibit No. 33.)

At the end of the first paragraph it reads:

"Before the meeting Charles L. Johnson was for closing the bank until I told him that in such an event the directors would be likely to find the State on their backs for dereliction of duty. That shut him up and he will turn in his stock.

"93 shares have been turned in, 90 more are to come sure, 160 are still doubtful, and 157 shares are being retained. The doubtful ones are Tynan and McMullen, and I believe yet they will both let go. Tynan has held on hoping he could find some way of getting back into the management but I've told him neither the Department nor the R. F. C. would stand for it.

"It is no time for placing stock with new men so shall just do the best we can for the present. As friends are made among the customers, some shares can be placed later, I am certain. Will be in Lincoln Sunday and if you can and wish to see me for half an hour for more details, just let me know. It's hard to write either you or George Woods without a personal touch; you are such good friends. Please show him this letter. Best wishes and a Happy New Year to each of you. Faithfully, W. H. Rhodes."

Is that a copy of a letter that you received from W. H. Rhodes?

A I probably received this. I would like to have you read it all instead of reading part of it.

Q Well, you can read the part that I have failed to read—I think the first paragraph.

A (Reading) "The shareholders met today and adopted the R. F. C. resolutions without a single dissenting vote. 473 shares were represented, counting the 88 shares already surrendered and your 15. Gaskill of Kansas City was as peaceful as could be, and in fact, made the motion to acquiesce. But he would have tried to make trouble had he felt certain of any support. I believe a few of the "die-hards" encouraged him somewhat, but not to a sufficient extent, and he evidently concluded it best not to start anything, for I was ready for him on the ground that his actions would imperil the bank's position. Before the meeting Charles L. Johnson was for closing the bank until I told him that in such an event the directors would be likely to find the State on their backs for dereliction of duty. That shut him up and he will turn in his stock."

Q Who wrote that letter?

A Rhodes wrote this letter.

Q And you received it?

A Yes, sir.

Q Now, they had a conference here on April 2, 1934, in regard to this bank. Or, as I understand it, there had been a joint examination of the Federal Deposit Insurance Corporation and your Banking Department examiners?

A Yes, sir.

Q And this was discovered at that time, and immediate objections raised, and it culminated in this meeting of April 2.

When did you first find out that Rhodes was dishonest in this matter?

A I suspected it from the letter, where he offered me some stock, and then I asked for him to come up here, and he didn't come, and I tried for a couple of weeks, 2 or 3 weeks, and finally I notified the directors that we wanted to have a meeting and bring this man up here.

Q That's the reason you didn't let him go before this final conference at Lincoln?

A I wanted to find out what was wrong down there.

Q Now, there is another exhibit here of April 3, 1934, which is a report of the conference, and it goes into details as to the assessment and the amount of the loan, etc., and states at the bottom of page 1 that "this audit also shows"—made by Mr. Basler, who was one of the accountants—

A He was the auditor for the Department.

Q —"that the assessment was paid on all of the outstanding stock by the present owners of this common stock exclusive of that transferred to and issued in the name of W. H. Rhodes."

Isn't it a fact that some of that assessment was paid with notes rather than with cash?

A Yes, sir.

Q Is that a customary method?

A Oh, this happens sometimes, but it isn't a good method. We objected to that.

Q Now, the next paragraph reads:

"The evidence as furnished by the auditor's report is conclusive that $16,250.00 was improperly used and with the testimony also given by the other representatives of the bank, the action on the part of Mr. Rhodes was premeditated.

"The conference resulted in the request upon Mr. Rhodes for his resignation as Assistant to the President and for an assignment from him on the common stock now standing in his name, both requests being complied with by Mr. Rhodes, who tendered his resignation to take effect immediately and assigned to them his interest in the bank. The directors are to proceed on the reallocation of the shares of stock standing in the name of Mr. Rhodes, the new owners to pay in the assessment and become owners of his proportionate number of shares. In this reallocation sufficient number of shareholders are to acquire the required number of shares of common stock necessary to qualify as a director. The directors are to report to this Department within a week of what progress they are making along these lines."

At that conference the members present were:

For the Bank: D. S. Hinds, Joe Wagner, Dr. E. W. James, Dr. J. H. Brey, W. H. Rhodes.

For the Department: August H. Basler, E. H. Luikart, F. C. Radke, M. N. Foster.

Now, when Mr. Rhodes made these admissions to you here, and I understand that he did admit what he had done—exactly what he had done—but I think he maintains still that he was innocent of any wrongdoing according to his idea; but with all of these officers present, including the attorneys, was any effort made to hold Mr. Rhodes and find out whether he had committed any crime in this matter?

A How do you mean—hold him?

Q Well, to find out whether there was any criminal character to what

he had done. Was there a misstatement there in your mind of fact which would come under the law of prohibiting any officer in the bank to put wrongful statements on records of the books of the bank?

A Well, did he do that?

Q Beg pardon?

A Did he put wrongful statements on the bank's books?

Q Did he put on the records that the stock assessment had been paid in cash?

A It had been.

Q Do you regard that as a bona fide transaction at Falls City?

A No, I do not.

Q Well, if it isn't a bona fide transaction, the statement that the stock assessment was paid in cash is not a true statement?

A It had been paid in cash, and paid by him.

Q Well, we have found other instances of this same thing, where a man in a corporation wanted to sell stock to get in the corporation, so he gave his personal note to the bank and had the money set up in the name of the corporation and then told the bank he would never withdraw the money from the corporation, and signed it as an officer of the corporation. Wasn't that selling stock to himself without any financial responsibility and without any right to the money; isn't that a fraud on everyone that did business with the man in that corporation?

A It was a fraud I think on the bank at Falls City. That is who the fraud would be on, because that Stella State Bank just had a right to hold every dollar of that money, and could have, and I so told them. At this meeting I told them that they could hold that money.

Q Was this matter reported to the Attorney General, to see if there was anything illegal about it?

A No, it was not. Well, I don't know.

Q What about the use of the R. F. C. funds to pay off his personal note at Falls City? If I understand correctly, when the proceeds were received from the R. F. C. on March 6, 1934, $11,000 of the $20,000 was sent to the Richardson County Bank to pay off the balance of Mr. Rhodes' personal note.

A That's correct.

Q And on March 6, 1934, a charge of $6,250 was made to reimburse the suspense account for funds withdrawn February 9, 1934, and sent to the Falls City Bank to pay the notes of Wagner and Rhodes?

A Yes, that is correct.

Q Now, if that is true, was there any action taken at this conference on April 2, 1934.-

MR. WATSON: You better identify this letter or conference report.

(Marked for identification as exhibit No. 34.)

Q Was there any action taken at the conference to hold him for using the bank's funds and pay off his own personal note?

A No, sir; there was not.

Q What do you think about that? Was there anything criminal about it?

A He gained nothing by that.

Q What?

A He gained nothing by that at all. We took that away from him. We undid that whole thing right in the meeting and then told those men they could hold that money if they saw fit.

Q Who bought this preferred stock then; who paid for his stock assessment? The bank paid the stock assessment on—

A Rhodes paid that with money that he borrowed from the Falls City Bank, evidently.

Q Well, all right then. Rhodes borrowed that money from the Falls City bank, and when he sent the R. F. C. money down there he was paying the Falls City bank with money that he borrowed; paying his personal note with the bank's money?

A Yes, sir.

Q Well, when a man does that, is there anything criminal about it?

A Yes, sir.

Q Well then, this hearing of April 2, 1934, shouldn't Mr. Rhodes have been held for an investigation, or at least shouldn't the facts have been turned in to the Attorney General to see if there wasn't grounds for a prosecution there?

A Well, it might have been done. The harm that was done was undone, and the officers were advised of what he had done; and, in fact, Earl Wagner knew all the time. He was in on the thing. He knew all the time that it was going on.

Q He was an employee of the bank below Mr. Rhodes?

A No, he wasn't even an officer.

Q I can't get your idea that Mr. Rhodes was not an officer of that bank. He signed the R. F. C. application as an officer of the bank, and assistant to the president, which is a regular job in many banks.

A The assistant to the president is very seldom an officer of the bank. I don't know of any such thing as an assistant to the president being an officer. He's more of a secretary; he's more of a secretary than anything else, and it's just a title is all.

Q If a man writes a letter and signs it "assistant to the president," I don't have to regard that as an order from that bank?

A If you think that the man writes it at the request of the president, yes, then you would. It is assumed that the president dictates those things; but he is not an officer of the bank there—the assistant to the president.

Q Well, if he took the name of janitor of the bank, but was able to sign R. F. C. loans, wouldn't he be an officer of the bank?

A I wouldn't say so. What difference does it make, so far as the R. F C. is willing to make the loan is concerned. That's very far-fetched.

Q I guess that's right.

A They loaned the money. It wouldn't matter how they loaned the money.

Q Anything else that you want to say at this time. It not, we will take an adjournment for lunch.

A I had a thought a minute ago.

MR. WATSON: This afternoon we have some further questions that I would like to ask you in regard to some other matters; I think possibly in connection with the Stella bank.

(At 12:25 p. m. an adjournment was taken until 1:30 p. m.

AFTER RECESS 1:30 p. m.

(Note: At this point, the deposition of the witness John C. Byrnes, of Omaha, was taken, in order that he might catch his bus to Omaha at 2 o'clock, which testimony was read later in the presence of those in attendance at the public hearing. Said testimony is set out in full herein at the close of the testimony of Martha A. Schaefer, beginning at page 267 herein.

E. H. LUIKART,

resuming the stand for further examination, testified as follows:

EXAMINATION CONTINUED

BY MR. WATSON:

Q Mr. Luikart, members of the Committee wish to know if the bank was examined between the time Rhodes went in—I think it was Columbus Day, 1933, October 12—and the time that he went out?

A I don't know. The files will show that in the Banking Department; they will show. I don't know.

Q Between October 12, 1933, and April 2, 1934. Let's leave that subject for a while.

There was a letter put in the record at Omaha that John S. McGurk wrote to one W. R. Scribner at Kearney, and I wish that you would examine the letter (exhibit no. 5 in the South Omaha hearing.)

(Same marked for identification as exhibit No. 35.)

It reads as follows: "July 24, 1931. Mr. W. R. Scribner, Kearney, Nebraska. Dear Ray:

"I am today writing Mr. Carl Stoll of Lincoln asking him to appear before Mr. Luikart to see what action he can get on your application for a position. I believe if they have something open, you will have no trouble in landing it. I will also talk to Mr. Bob Drake of Omaha, who is a very close personal friend of Luikart, and ask Mr. Drake to telephone Luikart to pay some particular and specific attention to your application."

And then the last paragraph:

"Just at the present time I am not financially easy enough to take up the note you write about. I trust Fred Wise will be able to furnish the money you want. If you do not get some word from Luikart very soon, please write me again.

"Yours truly, President." With the initials "JSM/W."

That was identified as a letter of the bank with Mr. McGurk's mark of approval on it.

A Is Mr. McGurk sending somebody to me for a position?

Q Yes, he referred Scribner to you for employment, on the ground that you were a very close personal friend of Bob Drake of Omaha; that is, Robert Z. Drake.

A Who is Scribner?

Q W. R. Scribner. That's the point I would like to find out.

A We have a Scribner that is assistant receiver.

Q Well, I noticed in our hearing at Wisner, Nebraska, we found where Mr. W. R. Scribner received a letter, saying that "we are contemplating relieving Mr. Doty as assistant to the receiver in charge of the Wisner State Bank and place you in charge of this bank."

A He is one of my assistant receivers.

Q Is that the same man?

A I think it must be. I assume that it is; 35 or 36.

Q Mr. George W. Woods, who was banking commissioner, of whom you testified this morning, was also a stockholder in the Lincoln Joint Stock Land Bank, was he not?

A I am not sure that he was.

Q Well, you know Mr. Barkley was president of the Lincoln Joint Stock Land Bank?

A Yes, sir.

Q Mr. W. E. Barkley?

A Yes, sir.

Q This is Mr. Barkley's affidavit as to stock.

MR. WATSON: We will enter that as an exhibit here.

(Same marked for identification as exhibit No. 37.)

It reads: "W. E. Barkley, being first duly sworn, deposes and says: I am president of the Lincoln Joint Stock Land Bank of Lincoln, Nebraska, and have examined the bank's stock certificates record from January 1, 1930, to October 15, 1935, and find the following to be true:" and then lists the names. (Handing same to witness.) Just examine that.

A Well, if he said that, that's right. I didn't know that he was.

Q Now, we have had complaint from the depositors' committee from South Omaha that the bond premiums paid through the receiver were not handled through local concerns. What has been your former and past experience in this connection, if you know what I mean?

A What kind of bonds?

Q I refer to premiums on bonds written for the receiver and assistant receiver, and insurance premiums on insurance policies.

A Those were written through agents that have been designated by Governor Bryan; about 12 or 15 different agencies.

Q Now, how was the payment of these premiums when you became secretary of the Department of Trade and Commerce being handled at that time?

A I don't know; I don't know.

Q Did the Nebraska Bankers' Association used to get the commissions on these premiums, and act as brokers?

A No; that I think was on burglary insurance.

Q They had nothing to do with bonds on receiverships?

A No, sir.

Q Do you know what they did with the commissions on that burglary insurance?

A Who?

Q The Nebraska Bankers Association. Was that used for prosecutions?

A Well, I think they got some income that way. Of course, they used it for—

Q Expenses of the Association?

A Following up bank burglaries and things of that kind.

Q We have here some letters that would indicate that there were also premiums on bonds handled through the Nebraska Bankers Association.

A That would be bonds of officers in going banks perhaps.

Q No, these premiums on bonds for G. I. Parker, receiver for the Bank of Clearwater.

MR. WATSON: We will have the reporter identify this exhibit at this time.

(Same marked for identification as exhibit No. 38.)

A Was this the previous policy?

Q Yes.

A I don't know about that.

Q This says January 21, 1931.

A I was in there at that date.

Q And here is another letter for identification, dated June 10, 1931.

(Same marked for identification as exhibit No. 39.)

A These bonds weren't written under my administration. They might have been written previously. Of course, I never handled any business through the Nebraska Banking Association.

Q This is another letter. Please examine that, dated June, 1931.

(Same marked for identification as exhibit No. 40.)

Those letters in connection with the bond premiums were paid through the Nebraska Bankers' Association, were they not?

A Yes, I would think so. This one is for Bliss (indicating.) These are previous bonds, and annual premiums had to be paid.

Q Well, did you do away with this old system of paying these premiums through the Nebraska Bankers' Association?

A Yes. I didn't do it that way.

Q Who got the commission under the system of your predecessor?

A I don't know.

Q Well, who gets the commission under the present system?

A The agents.

Q Through what company do you write those bonds?

A Oh, various companies.

Q Could you give the name of the ones that did the most of the business?

A Well, the Fidelity Deposit, the United States Guaranty, the National Surety Company, the American Surety Company, and there was another company represented by the Federal Trust Company that was called either the Great American Indemnity or—

Q Is that the Federal Trust Company of Lincoln, Nebraska?

A Yes, sir.

Q Do you have any connection with that company or have you had at any time?

A Never.

Q Has your son had at any time?

A He used to work in the insurance department.

Q What was his position in the Federal Trust Company's insurance department?

A Well, I suppose—I don't know as he had any title. He handled insurance.

Q Did he have a stock interest in it?

A None.

Q Did you have any stock in it?

A None at all; never did.

Q And obtained no benefit then; you personally, or he, were paid no benefit personally from the commissions paid to the Federal Trust Company?

A When he was in there he drew a salary.

Q I mean outside of his salary?

A I don't think so; no.

Q Your answer is "no"?

A No. I would say no. I don't think that he did.

Q What is the commission for writing receiver's bonds in the sum of $25,000?

A Well, the agent would get from 20 to 30 percent of the premium.

Q What would be the premium on a $25,000 bond?

A 25 times $5, which would be $125.

Q And on a $100,000 bond it would be $500?

A $500.

Q Has the rate changed any in the last 4 years?

A I don't think it has. It used to be higher.

Q Is a bond written for the receiver on every receivership?

A Yes.

Q And for the assistant receivers?

A Not only receiverships, but they have a sort of blanket bond that covers all.

Q Explain that.

A Well, we have one bond that covers all the employees in the office.

Q Of all receiverships other than yours, is that right?

A Yes.

Q The companies you named are the companies through which you are placing your bond business now?

A Well, I place them through agents. I had some 12 or 15 agents and I rotated between those agents.

Q Now, tell me this: Supposing you write a bond in the National Surety Company for a receiver, for you as receiver, bonding you for $25,000. and a premium on that would be $125. To whom would you pay that premium?

A That would be paid—we would pay it to the agent.

Q Who was the agent?

A Which company was that now?

Q The National Surety Company.

A We had several agents in several of the towns. Now, some of that was placed direct with the National Surety Company, I think, and then anybody among the agents that represented the company. I imagine various ones.

Q But how was the commission paid?

A The agent would get the commission.

Q And you would send the check to the agent, would you, or would you send it direct to the branch of the Surety Company, to Mr. Liles, in Omaha?

A I think that sometimes we would send it to the company, I believe, in a case of that kind.

Q That is, to Mr. Liles, the Nebraska manager at Omaha?

A Yes.

Q And then how would he dispose of the commission?

A He would send that—I think in most instances he would send that back to us and we would send it on to the agent.

Q Would the agent have anything to do in writing that bond, such as preparing an application for a bond, or anything like that?

A Yes.

Q And would it be some individual in the agency who was licensed to write bonds?

A Yes.

Q And would that commission be sent in full to one agent, or did you sometimes split the commission among several agents?

A No, we sent it to one agent.

Q Would you name the agents with whom you dealt, as distinguished from the companys?

A Well, I will try to. From Grand Island there was a Mr. Cowton, who was a broker.

Q Cowton?

A Yes. Here in Lincoln there was Swëeney Brothers, Schroeder, the Federal Trust Company, and after the Federal Trust Company, G. A. Luikart, the Lincoln Insurance Agency.

Q (By Mr. Williams) Is that Barkley's company?

A I think he is in there yet. He bought the business that the Federal Trust Company had. He bought their business.

Q (Mr. Watson resuming) That is W. E. Barkley, president of the Lincoln Joint Stock Land Bank?

A The Lincoln agency, and he bought their business when they went out of business and failed.

Q When was that, do you know?

A About a year and a half ago, I would say. I think there was an agent at Fremont by the name of Douglas.

Q (By Mr. Williams) Claude Douglas?

A I don't know his first name. And in Omaha there was I think a man by the name of Creighton that ran some of the business. And there was Harry Byrnes—he had some business. I don't know whether he handled it through agents.

Q Harry Byrnes?

A Harry S. Byrnes Company; and there was a man by the name of Mallow had some business; and I don't remember them all.

Q Did your son Gordon have a Gordon A. Luikart insurance company and write any bonds?

A They did.

Q Would they be included in the list now?

A Yes, I would put them in.

Now, there was another, John C. Byrnes, who was agent for the United States Deposit Company and the National Surety Company. His business is at Columbus; he is in the insurance business there.

Q Now, who owns the Gordon A. Luikart insurance agency?

A I think Gordon probably owns most of it.

Q Do you know anyone else who is interested in it?

A Well, I really don't know.

Q Have you any interest in it?

A I do not; I do not.

Q Is there anyone else connected with the Banking Department who might have some interest in it?

A No.

Q When was the Gordon A. Luikart agency commenced?

A After the Federal Trust Company failed he started the agency.

Q In other words, the Federal Trust Company business was sold to the Lincoln—

A The Lincoln General Insurance Agency.

Q It continued that business and Gordon started a new business?

A Yes, sir.

Q When did you say the date was?

A When he started?

Q Yes?

A Very soon after the Federal Trust Company failed.

Q About when was that?

A I don't know. Really I don't know.

Q 2 or 3 years ago, wasn't it?

A I would say perhaps within the last 2 years.

Q (By Mr. Fulk) June, 1933.

A That is a year and 9 months. He has been in business, I know, about a year and a half himself.

Q (Mr Watson resuming) About what amount of business have you written with his agency—the Gordon Luikart agency?

A I don't know.

Q Is that the only agency you have used since he has had his business?

A Oh, my, no. I use all the agencies.

Q You used all of them right up to the present time?

A Yes.

Q Now, I will show you a letter dated August 29, 1931, to E. H. Luikart, from Paul E. Walsh, which reads in part as follows, after listing the officers as Paul E. Walsh and Anton J. Tusa, vice-president of the Walsh Brothers Company—

A That Tusa wrote business for us.

Q It reads:

"Find enclosed bond in the amount of $200,000 as per instructions of Mr. Stull when he was in Omaha Saturday morning. We are also enclosing an application for your signature and have x'd out all the unimportant parts and will ask that you complete the balance and return same at your early convenience.

"The bonding company would also ask that you include with the

application a copy of the court order designating the depository banks that the receiver will use in depositing the funds.

"We understand how you wish this bond divided and will comply with your request in every detail when instructions are received.

"We want to thank you again for this nice business and the compliment of permitting our office to write it.

"Yours very truly, Walsh Brothers Company, by Paul E. Walsh."

Now, there were a great many bonds to be written, were there, for the depository banks too?

A Yes, sir.

Q Those were to secure—

A To secure the banks and the receiver of it, yes.

(Same marked for identification as exhibit No. 40.)

Q Please examine this letter and tell me what is meant by the third paragraph—"We understand how you wish this bond divided"?

A Well, I presume that is divided—what banks to write the bond on, or several bonds. There would be several bonds here.

Q Could that have any other meaning?

A Not that I know of.

Q Do you remember that agreement in that case?

A No, I don't.

Q Could that mean that the commissions were to be divided there or split?

A I don't think so, no.

Q Were they ever split—the commissions split in a case like that?

A Not to my knowledge.

Q Who is Paul E. Walsh and the Walsh Brothers Company?

A Well, they are an insurance company.

Q Well, how long have they handled your business?

A Ever since I have been in office. They are one of the original firms. They have a bonding company. I don't remember which one they have. I think the U. S. F. & G., but I am not sure about it.

Q Who is Anton J. Tusa?

A Well, he is vice-president of the company and the solicitor; he solicits business.

Q Has he ever written any business for you?

A Yes; like this here. He wrote it through this company for the Department.

Q What percentage of your total business did Walsh Brothers do, do you know?

A Oh, I would say, just guessing, about one-tenth.

Q Does that include what Tusa did in your figure? Walsh Brothers and Tusa about one-tenth?

A Yes.

Q Did you ever direct that the commissions on any bonds be paid into any campaign funds; or, what I mean to convey, to anyone who had not done anything or rendered any service, in the writing of a bond? That is rather a mixed-up question, but what I mean to say is: did you make any gift of part of the commissions to anyone?

A Never.

Q This letter, exhibit 40, can be explained a little better by the reply of the Receivership Division, in the letter of August 31, which indicates that that was the bond of Mr. Luikart, as receiver in the South Omaha State Bank.

A I think that this referred to a depository bond.

Q The letter does say "depository bonds." I presume that is the answer that was attached to that letter. Maybe it was a depository bond on the deposits of the receivership of the South Omaha State Bank.

A Well, it might have been. He speaks about designating the depository banks. It must be depository bonds.

Q That is a carbon copy that is affixed to that letter. I just tore it apart before you, and it would indicate that it may be a depository bond for the funds of the receiver in the South Omaha State Bank.

A I don't believe these have any connection. It says here: "We are enclosing herewith application of Mr. Luikart for his bond as receiver of the South Omaha State Bank. Check in payment of the premium on this bond will be sent you in a few days." It might be—it don't seem like it would be.

Q All we know is that they were attached together. We presumed from finding them together that that was the reply to the other one.

A I can't imagine that bank would have a depository bond for its own money amounting to $200,000.

Q Well, I believe this reply, exhibit 41, refers to an application for a new bond for you as receiver of the South Omaha State Bank, as distinguished from the bond described in exhibit 40. But there is no question in this exhibit 40 about this bond being for—one bond for $200,000, because it says, "Find enclosed bond for $200,000."

A Is it "bond" or "application"?

Q It says "Find enclosed bond."

A Now, let Mr. Stoll handle this. He may know about that. I don't know for that isn't mine.

Q You are speaking now of exhibit 40?

A The answer was written by Mr. Stoll.

Q What about exhibit 40?

A I don't know what this was.

Q And you wouldn't know just what that "divided" means then?

A No, I wouldn't. It would be guess work what the bond was for.

(Reply marked for identification as exhibit No. 41.)

Q Now, I hand you a letter from Anton J. Tusa, associate of Walsh Brothers Company, on his own stationery, headed "Anton J. Tusa," and dated August 5, 1932, to E. H. Luikart, and he writes:

"Dear Mr. Luikart:

"On returning to Omaha, and talking to Mr. Bock of the Fidelity & Deposit Bonding Company, I find that the renewal rate on the South Omaha State Bank would be $2.50 per thousand. Therefore, one hundred thousand would be $250.00. I am writing you this because the premium on these bonds has been raised to $5.00 a thousand, but on all renewal bonds the old rate applies.

"I would appreciate it very much if you could see your way clear to give me personally all the commission on this bond, so I can apply it on reduction of the $133.00 deficit incurred in the last primary campaign. The commission on the $250.00 premium would be $75.00. However, this is just my suggestion. I leave it to you to decide which is the best way.

"Thanking you for all past favors, I am,

"Very truly yours, A. J. Tusa."

In that letter it speaks of splitting the commission—what we call "splitting" the commission.

A No, he asked to send that to him personally.

Q Beg pardon?

A He asked that that commission be sent to him personally.

Q Yes, but he said: "I shall appreciate it very much if you could see your way clear to give me personally all the commission on this bond." Now, did he mean by that that in the past he had only received part of the commission on bonds?

A I wouldn't know. He would work—

Q Do you know if he ever received only part of the commission on a bond?

A I don't know.

Q Why would he be entitled to all the commission instead of part of the commission, because he had wanted to apply it on a $133 deficit incurred in the last primary campaign?

A He told me afterward or about that time that he was in I think the South Omaha campaign and that he had a deficit in that fund, and he was trying to reimburse himself out of his insurance business. I think that was his explanation to me. It was nothing to me.

(Tusa letter marked for identification as exhibit No. 42.)

Q Well, I have a letter here dated August 12, 1932, to the Fidelity & Deposit Company of Maryland, City National Bank Building, Omaha, Nebraska. Re: South Omaha. Signed by the chief of the Receivership Division, and initialed CGS, and which reads: (it is a copy):

(Marked for identification as exhibit No. 43.)

"Gentlemen: We are enclosing herewith certified copy of order

reducing the bond of E. H. Luikart as receiver of the South Omaha State Bank, Omaha, Nebraska, from $200,000 to $75.000.00.

"The commission on this bond last year was divided into three parts. This year we wish to have the entire commission paid to Mr. Anton J. Tusa, who is employed with Walsh Brothers Company of your city.

"We are enclosing herewith check for $187.50 in payment of the premium on the reduced amount of this bond and would appreciate it if you will send the commission check direct to Mr. Tusa, who has his office in the City National Bank Building at Omaha.

"Yours very truly, Chief Receivership Division."

Now, was that a copy of a letter that went from your office here to the Fidelity & Deposit Company?

A You found this in the files?

Q Yes.

A I assume it was, then.

Q Do you know anything about the splitting of that commission, as indicated there?

A I wouldn't know who received it.

Q Weren't you the head of the Department on the day when he said that the commission was divided into 3 parts?

A Yes.

Q Well, do you think that they would divide those commissions in 3 parts without your consent as head of the Department? That is apparently Mr. Stoll's letter. Would he do that without your approval?

A No, he would not; he would not. That might have gone—I have no recollection of it—might have gone to 3 insurance agents.

Q Let me ask you a further question: Was the dividing of that commission done by you without the approval of your superior, Mr. Bryan, who was governor at that time?

A Well, I didn't go to Mr. Bryan for details of this kind. All I was supposed to do was to see that the agents got their fair share of the business.

Q Did you get instructions from Mr. Bryan to divide these commissions and give them to any certain individual?

A No, no instructions excepting those who should write the business.

Q Well, did you give instructions to Mr. Stoll to do that?

A I may have and probably did, but he would be able to testify as to that. I don't remember the incident.

Q Whose campaign fund does that refer to?

A I couldn't tell you.

Q Did you get any of these commissions or any part of these commissions personally, either directly or indirectly by cash, or any other benefits?

A Not one cent.

Q We want to give you an opportunity to read this letter.

MR. WATSON: Just mark it for identification.

(Same marked for identification as exhibit No. 44.)

Q This letter is dated September 19, 1931, and is from Fred Liles, manager of the National Surety Company, to Mr. C. G. Stoll, chief of the Receivership Division, and stating that

"We have heretofore forwarded to you bond on behalf of George E. Hall, assistant receiver in charge of the State Bank of Omaha, in the amount of $50,000 and A. J. Barak, assistant receiver, in charge of the South Omaha State Bank in the amount of $25,000.

"This will acknowledge your recent letter in which you ask that these bonds be credited to the account of Agent Cowton of Grand Island, who will distribute the commission. We presume, in this connection, that you will remit direct to us, and we will do the needful as in the previous cases.

"Yours very truly, Fred Liles, Manager."

There is a pencil notation at the bottom, apparently your hand writing:

"Stoll: They have not yet sent me the commissions on the State Bank of Omaha bond. EHL."

A Yes, sir.

Q Will you please examine that and state why you were to get a commission?

A I wasn't to get the commission. Mrs. Farnsworth, who was a broker in Grand Island, would get a share of this business, and that is what this probably was. Cowton is the agent at Grand Island, through whom she deals. She wrote the business through Cowton at Grand Island, and he would pay for her probably a commission. He divided it. He would have his share and then pay her her share.

Q Why did you want the commission sent to you then?

A To see that it was properly paid.

Q Well, did you always do that with commissions?

A No, not in every case, I think.

Q Now, Mr. Luikart, the Committee would like to know why you would go to the trouble to have these commissions sent to you so that you could distribute them, on the time and with the postage of the Department, and send them out again and handle these personally unless there was some benefit to be derived by your Department or by you.

A It wasn't any benefit at all for the Department, but these agents received this business. Now, she expected her brokerage fee, and we wanted to see that she got it.

Q Now, let's see. ". . . credited to the account of Agent Cowton of Grand Island, who will distribute the commission." Why was that commission distributed to people who were not in the business of selling bonds for the National Surety Company and who had done

nothing to merit any pay because they hadn't done anything?

A I just got through telling you; this woman is a broker, who brokered through Cowton.

Q I understand what you told me, but this question is as to other people. Did it ever happen that part of the commission was given to other people that had nothing to do with the National Surety Company? Did you distribute part of the commission to them?

A No.

Q Or did anyone in your office do that for you? Did Mr. Stoll?

A Not to my knowledge, and I am pretty sure that he did not.

MR. WATSON: That is all on that insurance problem.

Q (Mr. Watson continuing) There is a record in the files here showing that you filed an expense voucher for payment out of the Department's funds for one, or I believe it was more than one, trip to Wyoming. Can you tell us what Department business you had in Wyoming for which the Department should pay the expenses of your trip?

A There is no such voucher as to Wyoming.

Q Beg pardon?

A There is no voucher for paying expenses to Wyoming. There might be one to Douglas, Wyoming, where I went up to see about a threshing machine that we had up there that we took upon a mortgage. That is possibly one time.

Q Well, did you ever go to Casper, Wyoming, for anything on Department business?

A If I did, it was this same time about this matter. It would be the same. I might have stopped at Casper over night. It's about 30 miles from Douglas. I can tell better if I see the distribution of the expense.

Q Well, I don't see anything in here about Douglas, but this is an expense voucher for the month of November, 1933. "E. H. Luikart, superintendent of banks, for trip to Omaha and return on the 5th; and Lincoln to Sidney in the Pullman, the 6th, Scottsbluff; the 7th, Scottsbluff to Casper, and the 8th to the 14th, Casper to Lincoln, and the 15th, return.

The itemized statement here shows that you arrived in Casper on the 7th and stayed there until the 14th, when you had breakfast at Casper.

A There is no charge on that, is there—from the 7th to the 14th?

Q It says here: The 6th, breakfast and lunch at Scottsbluff, hotel Scottsbluff that night; the 7th, Scottsbluff to Casper, breakfast, lunch and dinner; ate breakfast and lunch and stayed all night at the Hotel Casper; and then it skips to the 14th, when it says, breakfast at Casper, lunch and dinner; railroad fare Casper to Lincoln.

A Yes, sir; that is correct. This is correct. I went to Douglas and stayed over night at Douglas and then to Casper and to Riverton,

Wyoming, to take care of some personal business, and then I charged the expense back to the proper business that I had come for from Lincoln.

Q What was that business that you did for the Department at that time?
A I went out there to find and sell—to arrange for the sale of a threshing machine.
Q What for?
A For the trust at Harrison, Nebraska. They had a mortgage on the threshing machine. It had been rented to somebody up in Douglas and left there, and I attached it and had it for sale.
Q Did you sell it?
A Well, I don't remember whether I did or not.
Q Did you have any correspondence about it before you went out there?
A Yes, I did.
Q That is the Harrison trust, you say?
A I think it is the Harrison State Bank. I remember very distinctly about this.
Q You had had considerable correspondence you say about the sale of this?
A Well, whoever had charge at that time with the Harrison trust.
Q How much did you sell this threshing machine for?
A I couldn't tell you.
Q Where is the Harrison Trust Company?
A Harrison, Nebraska.
Q Where is that?
A Right on the edge of Wyoming and Nebraska. It's up in the northwest corner of the State.
Q Is that an oil-well drilling machine?
A I think it was used for that, yes. It was taken up to Douglas and rented and used for that purpose and left there.

MR. WATSON: We will leave that subject for a minute until we can get more information on it.

Q (Mr. Watson continuing) Do you have anything more to say?
A I think that Mr. Stoll would probably have some knowledge of that; either Stoll or Campbell or Downing would have knowledge of that. You can also find it under the "trust" files.
Q Now, is that the only time that you ever went to Wyoming at the Department's expense?
A As far as I can remember.
Q I will have this identified.

MR. WATSON (to reporter): Just identify the whole thing, and the voucher, but do not put it all in the record. Just the Department form of the expense voucher, and then put in the yellow sheet in his handwriting, showing his itemized expenses.

(Marked for identificaton as exhibits 46 and 46-a.)

This is an expense voucher for August, 1933. E. H. Luikart, superintendent of banks. And it shows that on August 20 you were in Scottsbluff; August 26 it shows Casper to Norfolk; and the 27th, mileage, Norfolk to Lincoln. In detail, in your handwriting, it states,

"19th, Kearney to Sidney;

"20th, Hotel at Scottsbluff; railroad to Casper, Pullman to Casper, lunch at Casper for 2;

"25th, dinner at Casper; telegrams, Casper to Chadron and Norfolk;

"26th, Hotel Casper; cab and railroad fare, Casper to Norfolk; and then mileage from Norfolk to Lincoln on the 27th.

Do you remember that now?

A No.

Q You don't remember that trip?

A No, I don't remember that trip. I remember that one there on that well-drilling outfit.

Q Well, I will ask you to look at exhibits 46 and 46-a, and will ask you if those were made out in your handwriting?

A The last one, 46-a, is not in my handwriting, but I signed it, and 46, I wrote that. That is my handwriting.

MR. WATSON: I would like at the same time to identify exhibit 45 and the voucher with it, 45-a.

(Same marked for identification as exhibits 45 and 45-a.)

Q Can you say whether or not that is your handwriting?

A 45 is my handwriting, and 45-a is not in my handwriting, but I signed it.

Q Now, one of those you do not remember?

A I don't right now.

Q Which one was that?

A Well, one way or the other, it was about the well machine.

Q And you only remember going out once?

A That is all I remember at this time.

Q Did you have any action in court in Wyoming about that time?

A I may have.

Q Do you remember of any?

A Well, I did have at one of these times, I am quite sure.

Q What was that action? Would you care to state to the Committee what that was?

A No. That is my personal business.

Q In other words, these expenses here were for your going out there on your personal business, one of these times?

A No, I don't think so.

Q You don't?

A No, sir. I never charge anything for my personal business to my expense account.

Q Was this a civil court action out there at that time?
A It was.
Q Well, do you care to state to the Department what that court action was?
A That is none of the Department's affair at all.

MR. WATSON: Well, we will leave that subject for a while, and I want to ask about salaries paid in the Department.

A And I want time to check this thing and see what it as all about.
Q Yes, I would be glad to have you refresh your recollection on that. I would like to get both trips cleared up, if possible.
A There would be no trouble about that at all.
Q You can examine those exhibits any time more thoroughly, if you care to, but at the present time I would like to go on and discuss this matter of salaries in the Department.

Section 8-1124 of the Compiled Statutes of Nebraska for 1929 reads as follows:

"Deputies, Attorneys, Examiners and Assistants, Salaries, Qualifications, Oath, Bond. The Superintendent of Banks may employ such deputies, attorneys, examiners, and other assistants as he may need to discharge in a proper manner the duties imposed upon him by law. Provided, however, that such deputies, examiners, or assistants shall not receive as salary or compensation an amount in excess of $2,400.00 per annum, and that the fees or salary of such attorneys, or firms of attorneys, shall not exceed the sum of $3,500.00 per annum: Provided further, the Superintendent of Banks may employ two chief deputies at a salary not to exceed $3,500.00 per annum; and provided further, that the Superintendent of Banks shall not employ any deputy or assistant or attorney who is employed or receives any compensation from any other department of the State government," etc.

Now, that was a part of the 1933 Banking laws, which went into effect on May 9, 1933.

Since that time have you and the subordinates of your Department at all times kept within the limitations set by that statute?
A We have.
Q What was Mr. Woods' salary? He was employed in 1933, the latter part of 1933, but he resigned February 1, 1934. Just up until he resigned what salary did he receive?
A I think it was—I don't know. The records would show that.

MR. WILLIAMS: Here is a list of the salaries for 1934.

MR. WATSON: I have a memorandum here for the year of 1934, compiled by our investigator, which shows that Merle M. Foster received $3,500; George P. Wilson received $3,200. Were they deputy superintendents that year?
A Yes, sir.
Q And the other salaries paid for 1934 were Aldrich, $2,700; Campbell, $2,700; C. G. Stoll, $3,999.96; I. W. Hedge, $3,600; Robert H. Downing,

$3,600; F. C. Radke, $3,500; Barlow Nye, $3,092.

Will you explain to the Committee why those are for those amounts, which are apparently in excess of the $2,400 set out in the statutes?

A Do you mean examiners, or are they deputies? Mr. Stoll and Downing were not deputies, nor were they attorneys.

Q Well, the only ones you were authorized to employ are deputies, attorneys, examiners and other assistants, and it provides that such deputies, examiners or assistants shall not receive a salary in an amount in excess of $2,400 per year. Now, how do you reconcile the amounts paid them with that $2,400 limit?

A That is in the Banking Department you are reading about now?

Q This is the Receivership Division all right. This is under section "i" of the Banking Laws—"Department of Banking, Powers, Insolvent Banks, Receiverships, 'Moratorium,' Miscellaneous Provisions."

I will refer that to you. (Handing same to witness.)

MR. HOLTZENDORFF: What section is it?

MR. WATSON: Section 8-1124.

MR. LUIKART: I think that is very clear. It is for deputies, attorneys, examiners and assistant examiners; that is the Banking Department salaries, qualifications, bonds owing to the Banking Department.

MR. WATSON: Well, that is the section devoted to receiverships.

MR. LUIKART: Well, these men went out.

MR. HOLTZENDORFF: Statutory receiverships?

MR. LUIKART: These men were not examiners or assistant examiners. They weren't deputies.

Q (Mr. Watson resuming) But it says "such assistants," doesn't it? Those are the only assistants that you were authorized to employ?

A Well, ——

Q Can't you understand that part that the Legislature stated?

A I do not.

Q Well, that is what we wanted to know.

A (Reading) ". . . and other assistants as he may need to discharge in a proper manner the duties imposed upon him by law."

Q Have you any objection to my statement as to the amounts those men were paid during the year 1934, as compiled by the investigator?

A I think that is correct. I don't think that refers at all to the salaries of Mr. Stoll and Mr. Downing.

Q Is there any other statute that refers to Mr. Stoll and Mr. Downing?

A No, sir; not that I know of.

Q Now, in regard to attorney's fees: There was a matter of the attorney's fees at the Bank of Stuart—the Citizens Bank of Stuart. It was the Flannigan bank, where they had all the litigation. I think the attorney's fees ran up over $10,000 there.

A They probably did, all of that.

Q Have you endeavored to conform to that part of the law that says the fees for a firm of attorneys shall not exceed $3,500 per annum?

A That refers to the attorneys in the office here. That is all that refers to. It doesn't refer to attorneys we hire outside.

Q It is part of what I read, section 8-1124: "And that the fees or salary of such attorneys or firms of attorneys, shall not exceed the sum of $3,500.00 per annum." Do you think that just refers to your office?

A That is all it refers to.

Q You made no effort to keep attorneys who were attorneys for receiverships outside of your office under that limitation?

A How are you going to do that? If you have a $5,000 case how are you going to limit it to $3,500?

Q That is up to the Legislature. I am asking if you tried to conform to that law passed by the Legislature?

A The law does not refer to the attorneys outside of the Department. It refers to the attorneys only on salary.

Q Well then, I take it from your statement that there were attorneys' fees paid outside, to firms outside of the office, over the sum of $3,500 for one year for services?

A There might have been. I don't doubt that there were.

Q Have you ever asked for an opinion from the Attorney General on that?

A I don't recall that I did.

Q On November 16, 1931, on your expense voucher it shows that you purchased a brief case at the Harpham Brothers Company for $18.50. Is that true?

A From who?

Q Harpham Harness Brothers, down here on P street. A brief case REG-308, $18.50.

A Well, I may have purchased one. It wasn't for myself. That might have been for some of the attorneys in the Department.

Q Now, the cost of that was charged up to the Banking Department.

A Probably to the Receivership Department.

Q How were the expenses of the Receivership pro-rated to the different receiverships?

A As to the details, I would ask that you question Mr. Hedge on that. He had full charge of that.

Q Now, who determined what attorneys' fees should be paid to these outside attorneys?

A Well, Mr. Radke would advise me as to the attorneys' fees, and we discussed the value of the services, and even made a contract for services, and he discussed it with me, and we fixed that.

Q And when the services were completed and any payment was ready

to be made, did you have any further discussion then as to the amount to be paid?

A I always o. k'd it.

Q You approved the check?

A I did, and if I didn't I should have.

Q Now, did you ever have any instructions from the Governor as to what attorneys to appoint?

A No, I think not.

Q Didn't the Governor ask you to appoint Andrew R. Oleson, of Wisner, as your attorney of the Wisner State Bank receivership?

A Well, I didn't remember that he did.

Q There is a letter in the Wisner State Bank hearing which stated that the Governor had so advised you to appoint him.

A Was it a letter that I wrote?

Q Well, I believe—

A If I wrote that letter, he so advised me.

Q Do you know of any others?

A No, I don't have any in mind.

Q Of course, he would have a perfect right I think to advise the heads of his departments if he wanted to; and did he have anything to say about what fees should be paid to the attorneys?

A He never did.

Q He never attempted in any way to control you in that matter?

A No, sir; never.

Q Did he ever attempt to control the prosecution of cases against anyone indebted to the receiverships?

A He did not.

Q Will you tell me what you understand by "repurchase agreements"? You know what I mean. Some of these banks sell their good bonds to some city bank on a so-called repurchase agreement. Take in the case of the South Omaha State Bank, bonds of around $250,000 were delivered to the Omaha National Bank for an advance of $135,000 in round figures—I'm not exactly sure of the figures; but how does that differ from a bills payable?

A Well, it is quite different. The bank usually reserves the option to redeem, or the loaning bank may have cause for saying that they are allowed redemption of the bonds on demand or a given date.

Q Any drop in the price of the bond then goes to the borrower, the bank?

A It always would, of course.

Q And if it had been an outright sale, under a sale and purchase, the beneficial interest would have passed to the purchasing bank and the loss would have gone to the purchasing bank—am I right?

A It should have.

Q Then it isn't a sale and purchase in that sense?

A It is. Ordinarily they put up a big margin, almost always, and I thought of buying the bonds back.

Q Now, there is a section in the statute, 8-136, which reads as follows:

"Rediscounts, Bills Payable, Loans, Penalty for Violation.

"The aggregate amount of the re-discounts and bills payable of any corporation transacting a banking business in this State shall at no time exceed the amount of its paid-up capital and surplus, nor shall any bank other than savings banks at any time permit its loans and investments, exclusive of its reserve and banking house and fixtures, to exceed in the aggregate fifteen times the amount of its Capital and surplus: Provided, however, any bank may, with the written consent of the Superintendent of Banks, rediscount paper in an amount in excess of its paid-up capital stock and surplus, and no bank shall, without such consent, transfer as collateral to its obligation, assets with a face value of more than one and one-half times the amount of such obligation. Any transfer of assets of a State bank in violation of this section, shall be void as against the creditors of such bank and any officer or employee of such bank who does, or permits to be done, any act in violation of this section, and any other person who assists in the violation of this section shall be guilty of a felony and shall be punished by a fine of not more than one thousand dollars ($1,000.00) or by imprisonment for not more than five years."

And then follows an exception as to rediscounts and Federal Reserve bonds.

Would you regard, or in your opinion does that section apply to repurchase agreements?

A I think not.

Q You think not?

A Yes.

Q That is the interpretation your Department has placed on it?

A Yes.

Q Section 8-194-B of the Compiled Statutes of Nebraska for 1929, as amended in 1933, reads as follows:

"Deputies and Assistants, Appointment of, Compensation, Mileage.

"The Secretary of the Department of Trade and Commerce shall appoint such deputies and assistants as he may find necessary for the efficient and economical handling of his office, including receiverships. The acts of such deputies shall be executed in the name of the Secretary of the Department of Trade and Commerce, by the deputy, and unless and until otherwise directed by the Secretary of the Department of Trade and Commerce in writing, the acts of the deputy shall be the acts of the Secretary of the Department of Trade and Commerce. Where deputies or assistants are assigned by the Secretary of the Department of Trade and Commerce to receiver-

ships of banks in liquidation, the Secretary of the Department of Trade and Commerce, with the approval of the court, shall fix their compensation for services in such receiverships, which shall be taxed as costs of the receivership."

I will skip a little there, and then I read:

"Provided, that, in allocating the expense of the Department of Trade and Commerce to the various receiverships, that in certifying such expense to the courts in which the receiverships are pending neither the Secretary of the Department of Trade and Commerce shall allocate nor certify nor shall any court in which receiverships are pending compute, recommend or allow as actual and necessary expenses incident to such receiverships mileage claims or items of any official, examiner, helper, or deputy receiver in charge, deputies, assistants or employees, unless requisition for the same shall have been approved by the Secretary of the Department of Trade and Commerce or banking commissioner before mileage expenses shall have been incurred; and provided further, if trip or trips be made by automobile, or otherwise, only one mileage claim shall be made and allowed at the rate of not more than five cents per mile for each mile actually and necessarily travelled by the most direct route, regardless of the fact that one or more officials, examiners, helpers, deputy receivers in charge, assistants or employees are transported in the same motor vehicle; and provided further that such requisition shall direct payment of mileage on the basis of the actual cost of travelling by rail or bus where economical and practical if mileage expense may be reduced thereby and shall further direct combined trips with mileage pro-rated wherever possible."

Here is the record prepared by one of our investigators, that William T. Gartland, on July 12, 1933, filed a claim for $27.73, Hastings to Holdrege and return; 139 miles at 7 cents per mile, $9.73. That is No. 4482; and the same man on July 5 filed a claim at 6 cents per mile; and on June 27, 6 cents per mile; on August 17, 6 cents per mile. Some of these vouchers have not been approved.

Did you ever give any authority to William T. Gartland or any of your other employees, or approve any of their vouchers, for a higher rate or return than the statutory rate of 5 cents a mile?

A No, sir.

Q Do you know anything about these charges that I have mentioned here?

A I think there are such charges. Let me see the requisition.

MR. WATSON: I think we better have a recess here.

Just take this for the record: Section 8-194, Compiled Statutes of Nebraska for 1929, was amended twice in 1933. Senate File No. 263, which contained the emergency clause, and went into effect May 9, amended this section, but contained no statement regarding mileage.

House Roll No. 14, which amended the section with reference to

mileage, as already read into the record, did not have the emergency clause, so did not go into effect until 3 months after the Legislature adjourned, which would be August 9, 1933

The section as set forth in the 1933 Compiled Statutes Supplement at 8-194 (a) is the amendment that had the emergency clause, which went into effect May 8; and 8-194 (b) did not have the emergency clause and did not go into effect until August 9, 1933.

MR. WATSON: I believe that is all the questions I have to ask you at this time, Mr. Luikart. You may be excused.

(Witness excused.)

E. H. LUIKART,

recalled, testified further as follows:

EXAMINED BY

MR. WATSON:

Q Mr. Luikart, you stated to me that you had some additional information regarding the vouchers—I believe they are exhibits 45, 45-a and 46, 46-a—regarding your trips to Casper, Wyoming. Will you please state to the Committee what you have to state?

A Now, on June 31, 1932, we sold the Harrison State Bank trust one oil rig, not carried as an asset, sold Hugo Updike, for which we received $500.

Q Well, where was Hugo Updike located?

A I think at Douglas.

Q Well, will you find out definitely so you can answer it?

A I don't know whether I could or not.

Q Have you got some correspondence on that to make certain on that? Is he the man that you went to see out at Wyoming?

A No, I went out to see a firm of attorneys at Douglas that had this matter in charge.

Q That represented Mr. Updike?

A No, they looked after disposing of the property.

Q In other words, you had retained a firm of attorneys in Douglas to represent you?

A First we had to find the machine and get possession of it.

Q You obtained possession of this machine out there? The machine was out there in the first place?

A At Douglas.

Q That is what I want to get clear, I understood the machine was in Nebraska, from your early testimony.

A No, the machine was at Douglas and had been out there, and as I remember it now, he had rented it and left it and we had to get permission to go out and get it, and afterwards it was sold. Now, that was—now, on the other voucher—at this same time I was at Casper to look into the matter of about $27,000 worth of City of Casper bonds that we had in some of our trusts, and I went out there at that time

and again later on a second trip to find some way of disposing of those bonds. They were practically worthless, and at one time we thought that we might exchange those bonds for some real estate that might have some value, and that correspondence is in this file here.

Q Will you just read from some of that correspondence, to indicate that you went out there on that business?

A My first letter was to Judge R. R. Rose, Robert R. Rose, Casper, Wyoming, August 26, 1933:

"Since you were in the office yesterday afternoon I have received information from the City Attorney's office with reference to the various improvement districts in which you are interested, and will pass this information on to you for whatever value it may have.

"Sanitary Sewer District No. 16—"

Q Any other part of that letter—let's just put that letter in the evidence here.

(Same was thereupon marked for identification as exhibit 55.)

A Here is a letter to Judge Rose, August 29, 1933. This refers to the same thing as to our conversation on August 25.

Q I think that will be sufficient.

(Same placed in evidence for identification as exhibit 56.)

A Well then, after that I was there again, and this later date as shown on my vouchers here, at that time I arranged with Mr. Ouderkirk, who then was the vice-president of the Casper National Bank, to handle these bonds for us.

(Said letter was thereupon identified as exhibit 57.)

This is dated November 21, 1933.

"Mr. J. D. Ouderkirk, care of Casper National Bank, Casper, Wyoming." I will just read this. I don't want this in the record.

My Dear Mr. Ouderkirk: Since returning from Wyoming I have just now gotten down to the daily grind, and among other things I have in mind our conversation about the real estate man, Mr. Barnard, who you thought might be able to trade the bonds I have in several receivership trusts in Casper.

"I am enclosing a list of the same herewith, and would ask you to be so kind as to see Mr. Barnard and have him make the attempt to trade those bonds for real estate in Casper. Preferably it should be clear of encumbrance, but if encumbered should show a very good margin of equity.

"If he should be successful in finding any such exchange as this, please have him submit it to us with the proper showing as to the present value of the property to be exchanged, and I should like very much to have you personally be one of the three appraisers who set the value on the property. I presume in such an exchange we should pay Mr. Barnard the regular going commission at Casper on actual value of the property received.

"Yours very truly," etc.

MR. WATSON: Just identify this also.

(Same identified as exhibit 58.)

Q These exhibits 55, 56, 57 and 58 are your evidence of the necessity for your going to Casper, Wyoming, at the expense of the State Banking Department—is that true?

A That is correct; yes, sir.

MR. WATSON: Now, we will drop that subject.

Q (Mr. Watson continuing) Now, I would like to take up the matter of joint stock land bank bonds.

While you were secretary of the Department of Trade and Commerce, did you at any time ever recommend to the banks under your supervision, or did any of your employees for you, recommend to these banks that they invest any of their reserve in any joint stock land bank bonds?

A I wouldn't recall that. I don't recall it.

Q There has been some information that the Banking Departments, both National and State, made requests of their banks sometime 3 or 4 years ago, to invest in what they called liquid assets or bonds. Do you have a recollection of any order or request going out of that nature?

A About joint stock land bank bonds?

Q Or any bonds and securities.

A I think that practice was pretty much over when I got in. I don't recall it.

Q Since you have been in the Department, that has not been a suggestion of any Banking Department, while you have been connected with the Banking Department?

A I don't recall such a suggestion.

Q Did you ever find a record where any other bank examiners or supervisors or State examining officials ever made such suggestions or recommendation?

A I have heard of it. I never seen any record; no evidence of it.

Q What did you hear in regard to that?

A Well, the period from '27 say to '29, along about that time, or maybe '30, there was a lot of talk about investing in liquid assets, and there was quite a run of buying bonds of various kinds.

Q Now, the banks have taken terrific losses because they invested in bonds at that time. What do you think of the investment? What is your opinion, gained from your work here regarding investment of bank funds in such so-called liquid securities?

A It depends on the kind of bonds.

Q Isn't it a fact that the very time when the bank needs cash from liquid security, the prices of these bonds are down so that you can't sell them for anywhere near their correct value?

A Well, that has been so within the last few years.

Q They failed to be liquid at the very time that the bank needed liquid assets?

A It has happened these last few years, yes.

Q Now, the price of Lincoln Joint Stock Land Bank bonds went down very low, did they not?

A Yes.

Q What was the "low" on that?

A I think the very lowest was probably 28 or something like that

Q There were a great many of these Lincoln Joint Stock or Fremont Joint Stock Land Bank bonds in the assets of the receiverships, over which you had jurisdiction?

A Yes, sir.

Q What was your policy as to selling these bonds?

A You mean in the receiverships?

Q Yes, in the receiverships.

A Well, we sold them when we thought we were getting a good price, or when we needed funds to make up a dividend we would pick out the best and sell some of those bonds.

Q Would you sell all of the bonds of all the receiverships at the same time, or did you just sell a few here and a few there?

A Usually picked out a few here and a few there.

Q Did you have anything that guided you in such choice?

A Well sir, I had the best advice I could get from financiers and bond men, and the information I got in financial papers and those things.

Q Now, when you sold those to whom did you sell them? I think we will confine our discussion to the joint stock land bank bonds.

A To the person that I could get the highest returns from.

Q Did you ask for bids before you would make a sale?

A Always.

Q And whom did you ask; what firm?

A We would ask the firm in Kansas City.

Q What is the name of it?

A I don't have it in mind. You can get—

Q Gurtler Devlet?

A Mr. Hedge could give those to you. There was 3 or 4 firms.

Q What other firms besides the Kansas City firm? What Lincoln firm?

A Well, we didn't have much in Lincoln. I think there was Burns & Company.

Q How do you spell that "Burns"?

A B-u-r-n-s. We would get 4 or 5 quotations.

Q Did you send requests for bids to the First Trust Company?

A Oh, I think occasionally.

Q The Lincoln First Trust Company?

A Yes, sir.

Q And the National Bank of Commerce?
A Well, I don't know whether we did or not. We may have.
Q How about the Federal Trust Company?
A I doubt whether we submitted any of these bonds to them.
Q Were there any other private firms in Lincoln?
A Of course, we always asked the Land Bank itself.
Q Was there one to Mr. Jouvenat?
A We may have some to them.
Q What is the name of his firm?
A I don't know.
Q That is Victor J., isn't it?
A That's the man's name—Victor.
Q Who was associated with him in his company?
A I couldn't tell you; I don't know.
Q Is he connected with the Federal Trust Company in any way?
A I think he was.
Q Were you ever connected with the Federal Trust Company?
A I was not.
Q And the most of these bonds, the joint stock land bank bonds, both of Fremont and Lincoln, were sold direct to the banks which originated them?
A Yes.
Q Will you just state your procedure there, and then anything about the price that you received ordinarily?
A I just stated that we would get bids on these firms, from 4 to 5 firms, and almost invariably the joint stock land bank would pay us from 1 to 3 points higher than anything we could get.
Q And in that case you would sell to the joint stock land bank itself?
A I always sold to the highest bidder; always.
Q Now, suppose you had $10,000 of Lincoln Joint Stock Land Bank bonds, and the price was 30, as offered to you by Mr. Barkley, the president of the Lincoln Joint Stock Land Bank, which was 2 points higher than any other bid you had been able to receive; would you sell to Mr. Barkley there of the Lincoln Trust?
A If we had them to sell and wanted them to sell
Q Did you ever sell any that low?
A I couldn't recall.
Q What is the lowest you recall that you sold bonds?
A I wouldn't attempt to say.
Q I think we found a record of bonds that were sold around 30, or as low as 35 anyway.
A We might have.
Q Take the bonds belonging to the Filley receivership in the Filley bank.
A Yes.

Q I think in that case—well, we will find the Filley record on that. Well, if that was the highest bid, and you did sell them to him at that time on such a bid, or supposing you sold those bonds for $35, let's see, a $1,000 bond would sell for $350, would you get a court order confirming your sale of the bonds?

A No, sir.

Q Why not?

A Because the order of the court appointing a receiver gives me authority to use my discretion to do that.

Q Now, did you hear me read that opinion from the Attorney General, requested by Mr. Downing?

A I did.

Q In which he said that a court order was necessary, because a receiver was an officer of the court?

A I did.

Q Well, he quoted from that order in appointing you receiver, didn't he, in that case? Why didn't that opinion govern in the sale of the bonds? Wouldn't it govern you in the sale of the bonds?

A Because it isn't practical.

Q Well, is it legal?

A Well, none of the Judges ever have refused to approve my act in so doing.

Q Now, in the case of the Filley bank: In 1933, February 3, 1933, some of the bonds were sold for 30 and some for 35.

A Well, what kind of bonds were they; were they 3½'s?

Q The 4½ bonds sold for 30, the 5 for 35

A There would be a reason for the difference in value.

Q Well, in that case did you get a court order, or did you consider it was necessary to get a court order?

A I don't believe I did. I don't believe I did.

Q How long has it been since you have adopted this policy of not getting court orders approving the sale of bonds?

A I think I never got court orders, excepting for bonds on which there were no quotations or where we were cleaning up at the end of a receivership.

Q Do you remember whether or not it was the policy of your predecessor, Mr. Clarence Bliss, to get court orders for the sale of bonds?

A I don't know what he did.

Q You don't?

A No.

Q You never saw any court orders that he obtained for the sale of bonds?

A I never did.

Q I would now like to read a quotation from 71, A. L. R. 788. It states the law as to receivers.

"The property in the hands of the receiver is in custodia legis; the possession of the property by him is the possession of the court which appointed him. It follows that he has no personal interest in the property in his official character, except that which arises out of his responsibility in the faithful and correct discharge of his duties. He is the medium through which the court acts in the execution of its orders and decrees."

That is correct, isn't it?

A I don't know.

Q I would like to quote from 53 Corpus Juris, 147, section 186 on Receivers, section D:

"186 (d) Compromise and Settlement.

"Unless authorized so to do by statute or by order of the court in which his appointment is made, a receiver has no authority to compromise claims subsisting in favor of the estate committed to his charge, or release a debtor without receiving payment of the full amount due."

In the case of the sale of bonds direct to the debtor, did it ever occur to you that that was release of a debtor directly?

A What do you mean by "debtor"?

Q Well, one who owes—a debtor.

A Who do you mean in this case is the debtor?

Q Well, in this particular case the Lincoln Joint Stock Land Bank. Isn't that the same as if I organized a corporation and called it "B. Frank Watson, Incorporated," and issued bonds, and bought my bonds up at 30 cents on the dollar; would you sell them to me at 30 cents because my credit had gone down on the open market, and at the same time refuse to cancel my note for 30 cents on the dollar, without a court order; is that the attitude that you would take?

A The cases are not similar at all. In the case of the bonds I sold there were no notes. We never compromise a note for anything less than face without a court order.

Q We find that is true. That is why we can't understand why there were no court orders obtained in the sale of the Lincoln Joint Stock Land Bank bonds to the bank.

Now, Mr. Reporter, will you look up that Attorney General's opinion, addressed to Robert H. Downing, one of the early exhibits?

(Thereupon, exhibit 7 was produced for counsel.)

Q Here is exhibit 7, which is a letter dated August 1, 1934, to Mr. Robert Downing, from the Attorney General's office. Have you ever seen a copy of that opinion?

A I probably have.

Q In your opinion, doesn't that refer to the Lincoln Joint Stock Land Bank bonds sold to the Lincoln Joint Stock Lank Bank?

A This opinion here refers only to the compromising of a note in the trust; only that.

Q Why do you distinguish between a debt represented by a note and a debt represented by a bond?

A These sold for less than book value on the books, because that is the custom. A bond is quite a different thing from a note; quite a different thing.

Q But as I understand it, the receiver has authority, due to his general orders, so to speak, to settle any bond or any note if he can get the book value of it, for the amount that he is charged on the books for, but if he sells it for less than what he is charged on the books, then he has to have a court order, because it is the court's act that he is doing, and not his own act. Unless he wants to avoid a suit by a dissatisfied creditor, as stated in the last paragraph of exhibit 7, he had better get a court order, don't you think?

A Well, as a matter of fact, it is absolutely impractical.

Q Now, here is a case of the Merchants Bank of Utica. An application for an order to sell bonds was filed with the court, signed by C. G. Bliss, Secretary of the Department of Trade and Commerce, and attested the 19th day of April, 1930, in which the receiver or the secretary requests the receiver of the said Merchants Bank of Utica for authority to sell the following classes of bonds:

Inland Stell Company, 4½ first mortgage S. F. Gold Bond, series "A" due April 1, 1978.
Kingdom of Denmark, 4½.
Union Pacific Railroad Company, 4½
City of Copenhagen, 4½
Republic of Colombia, 6.
Brooklyn City Railroad Company, 5.
Department of Akershus (Norway), 5.
Abitibi Power & Paper Co., 5.
Government of the Argentine Nation, 6.
Republic of Finland, 5½.
The Long Bell Lumber Co., 6,
Security Bond and Mortgage Co., 5½.
St. Louis-San Francisco Railway Co., 4½.
Commonwealth of Australia, 5.
Rochester Central Power Corporation, 5.
American Gas and Electric Co., 5.

MR. WATSON: Will you identify this, Mr. Reporter?

(Same identified as exhibit 59.)

Q Now, will you please examine this exhibit 59 and tell me if you have seen similar applications filed by Mr. Bliss as receiver?

A I have not.

Q You don't know whether it was his policy to obtain court orders approving that?

A I don't know whether he did or not, but I have got court orders where there is a question about it.

Q On each bond?

A Only bonds there is no market on, and bonds where you can't establish a value.

Q Well, the Committee has been unable to find any of those court orders on many of these foreign bonds that have been sold. Now, many of these bonds there are listed on the New York Stock Exchange and have a going market; that is, a central market, but as far as we can find out, there are no court orders in the files for the last 3 years at least for the sale of any bonds except possibly this Neeman Company at Fremont, where the thing was in a hopeless financial condition, and the bonds were sold at $10 on the hundred to local people; but that represented a small item when taken in connection with the hundreds of thousands of bonds that have been sold without a court order.

Now, it is our contention that the court orders are necessary in all these cases.

A Well, I do not agree with you.

Q Have you any superior now outside of the court in the case of these judicial receiverships?

A I have not.

Q Does the court allow the salaries of Downing, Stoll and Radke, for the services that they perform in your judicial receiverships?

A Yes, they do.

Q And the employees of all the Banking Department in the receiver ship division?

A My proportion.

Q A complaint has been made of this nature: Is it true that you sold good bonds when the price was good and kept other bonds on which the price was lower? What is your policy? Do you have a definite policy as to selling bonds when there is a rally in the market or anything like that?

A Yes, we do.

Q You sell them under those conditions if possible?

A We watch them very closely, and when they get to a good price where we think they are at the top, then we sell them.

Q Who determines the sale price?

A Well, we discuss that—Mr. Hedge and myself, and I talk with men in that business, and I read the financial news and get the best information that I can.

Q Now, did it ever occur to you as an additional reason why you should have a court order for approving the sale of these joint stock land bank bonds to the joint stock land bank was that you are a stockholder of record in the Lincoln Joint Stock Land Bank and have had a connection with it?

A I have had no connection excepting some small stock holdings, and

I haven't had those I think since 1930, although the books show 6 shares in my name, but I haven't got them. Even if I did have them, it wouldn't influence me selling bonds to them.

Q The State Bank of Filley had $42,785.99 in its bonds, stock and warrants account on the date of its closing December 23, 1932. Do you know what the capital stock of that bank was?

A I don't remember.

Q Do you know what proportion of that bonds, stocks and warrants account consisted of joint stock land bank bonds?

A I couldn't tell you without looking at the records how many bonds they had of the joint stock land bank. It's a matter of percentage.

Q Schedule 6 of their inventory shows:

Fremont Joint Stock Land Bank, 4¾		3,000
do		1,000
Lincoln Joint Stock Land Bank, 5s42		2,000
Fremont Joint Stock Land Bank, 4¾-65		4,000
Those are the par values.		
Fremont Joint Stock Land Bank, 5s52		8,000
Lincoln Joint Stock Land Bank, 4½-66		5,000
do	5s51	4,000
do	5s42	1,000
do	5s54	2,000
Total		30,000

Q Now, what part are Lincoln and what part are Fremont?

A 16 Fremont and 14 Lincoln.

Q Now, will you look at the inventory of the State Bank at Filley and state what the capital and surplus of the bank was at the time that it closed?

A It states here capital, $10,000; surplus, $8,000.

Q In your opinion, does the law, section 8-150, Compiled Statutes of Nebraska for 1929, containing the 20 per cent limit on the loans to any corporation, cover the purchase of bonds by a bank, such as was the case in this Filley bank, for more than their capital and surplus?

A I don't think it does.

Q Why isn't a bank owning bonds in the same position as a bank owning notes of a borrower?

A You better ask the Comptroller of Currency about that.

Q Well, I would like to call your attention to the opinion rendered by Attorney General Spillman, which was printed in his published opinion, and is exhibit 6, in which he states:

'You inquire as to the amount of bills receivable issued in the way of Joint Stock Land Bank Bonds that may be carried by a State bank.

"Allow me to say in answer to your question that I believe

such bonds are like the notes given by any other bank or corporation insofar as the right of any State bank to make loans upon them either directly or indirectly is concerned. Hence, no State bank should have to exceed 20 per cent of its capital and surplus invested in the bonds of any one Joint Stock Land Bank. (See Sec. 8013, Comp. Stat. of Neb. for 1922.)

"The bonds of Joint Stock Land Bank are not government bonds in the sense that Liberty Loan Bonds are; that is to say, they are not the direct obligations of the government. A Joint Stock Land Bank although it is in a sense a government instrumentality is only such in the same sense that a National bank is an instrumentality of the United States Government. I am returning herewith the two pamphlets inclosed with your letter."

Signed "GWA."

Now, have you ever seen that opinion?

A I think not.

Q Well, do you know any reason why that opinion should not govern the Banking Department?

A I do not think the Attorney General's opinions govern the Banking Department.

Q Now, you have heard testimony here about the picnic for the assistant receivers at Linoma Beach on September 3 and 4, 1932. Was the expense of that picnic paid by the receivership department of the Banking Department?

A Well, as I remember, each person paid for their own meals—I think they did.

Q We have an audit here, prepared by one of our investigators, showing that the cost of that picnic was, lodging, $130.77; mileage, $406.62; entertainment, $53.75; supplies for the meeting, $107.50; other expense checks issued, $161.25, and then a question mark on this report made by our investigators, $54, or a total of $752.64.

Will you state whether or not it cost the Banking Department that amount for that meeting of the assistant receivers?

A Well, whether it did or not, if we call our assistants in here to this town for a general meeting, we pay their railroad fare and part of their expenses. They are called in here about once a year for that purpose, and it is a good thing—it's a good thing to do, and I have no apologies to make for that meeting, or for any meeting of that kind.

Q How many meetings of that kind have you had while you were head of the Banking Department?

A Let's see, probably 3 or probably 4.

Q Could you give us the dates of those.

A I could not.

Q Where were they held?

A One of them was held out at Linoma Beach, and we had one in

the hotel here, either the Lincoln or the Cornhusker, and one up here in the Governor's sitting room, and one at the House of Representatives. I think that is 4 of them.

Q Were they all held in the year 1932?

A No, they were held in various years—over the 4 years.

Q And were all the employees of the Receivership Department invited in for those parties?

A They were not parties. They were business meetings.

Q And were any solicitations made there for campaign funds?

A There was not.

Q There was some testimony here given by B. H. Schroeder, your present assistant receiver of the South Omaha State Bank, that he had been solicited for a contribution to a campaign fund at this meeting at Linoma Beach, which I understand is a pleasure resort, is it not?

A Supposed to be; and we were down there and had a lunch there and rented a hall nearby.

Q Well, do you know of anyone making such a request for contributions?

A I do not.

Q Do you know whether Mr. Stoll received any contribution from assistant receivers for any political campaign?

A If they send it to him he might take it, or if they brought it to him. If they did, it was absolutely voluntary.

Q Do you know of any instance in which an employee of the receiver ship department or of the Banking Department, or any of the employees under you, was requested for a political contribution, and did not make the contribution and objected to making any contribution, and for that reason was dismissed from your employment?

A There is no such case; not one; absolutely not one.

Q Now, what has been your policy with regard to requiring bonds of officers of banks in the State?

A We have asked and tried to urge the securing of bonds wherever we could. We couldn't always get it.

Q Why couldn't you get them?

A They simply would not get them.

Q The brokers refused to write them, or the agents?

A There were some cases like that, and in some cases they would not pay for them; they wouldn't buy the bonds.

Q What did you do in a case like that, where the bank was in such a condition that the bonding company would not write a bond for the officer?

A Well, they write them very sparingly anyhow. They were hard to get, and sometimes you couldn't get them.

Q How about the license required of bank officers: Did you get that in every instance?

A Yes, where we issue the license.

Q Well, just this matter of bonds; You couldn't enforce the law in that regard when the officers of the bank couldn't get bonds, could you?

A Sometimes they couldn't get bonds and sometimes they wouldn't get bonds. They were men that they thought did not need them, and as a rule men of that kind didn't need them. They would take the loss and not miss it.

Q Aren't your examiners requested to report such instances where the banking officers are not bonded?

A They did.

Q Isn't there anything you can do about it?

A I wish you would tell me how. I have tried it.

Q Have you any particular instances that would explain to the Committee your trouble in that regard. Were the Leisy's at Wisner bonded—the officers of the bank at Wisner?

A I think they were.

Q There was testimony here in one of the hearings that the officers had not been bonded during the last 5 years that the bank operated?

A Well, that's a matter of proof. I thought they were bonded. I don't remember.

MR. WATSON: Just now it is 5 minutes after 5. This has been a rather hard day for all concerned, and I suggest that we take a continuance now and adjourn until 9 o'clock in the morning; and I wish the witnesses who have testified would hold themselves subject to further questioning, although we will, of course, attempt to expedite the hearing as much as possible.

(Witness excused.)

(Thereupon at 5:05 p. m., an adjournment was taken until the following morning, Saturday, October 19, at 9 a. m.)

RECESS

E. H. LUIKART

Recalled as a witness, having previously duly sworn, testified as follows:

BY MR. WATSON:

Q Mr. Luikart, have you heard the testimony with regard to the purchase of stamped envelopes and stamps in the early part of 1932, and with regard to Exhibit 88, Mr. Bryan's letter to the depositors?

A I didn't hear it; I was out.

Q Will you please state to us how the cost of sending out those letters was charged to the department?

A I think that the department drew vouchers on the appropriation fund, paid that by vouchers; you will find vouchers for that.

Q In other words, the expense was first charged to the Administration

Fund of the Receivership Department, and later warrants were issued of the Going Bank Department for about $1700.00, I believe the testimony was.

A I don't remember the amount.

Q And that money was used for the purchase of stamps and envelopes that were turned over to the Receivership Department?

A As I remember it, it was used for the purpose of stamped envelopes.

Q Now, did you approve the charge of this amount against the Going Bank Department?

A I approved that against our appropriation.

Q Was that on the instructions of Governor Bryan?

A Well, he was sending out letters to depositors; I assume it was; I never saw who he sent them to—he sent a great number of letters out to people over the State of Nebraska, I think mainly depositors, and asked that—I believe we gave him some aid after hours, our department did and other departments also helped address envelopes, and I supplied the—made requisition for the voucher for the stamped envelopes.

Q Now, did you consider this a valid charge against the Going Bank Department?

A I did.

Q On what ground, Mr. Luikart?

A Well, on these grounds, that the Governor was receiving a constant stream of letters inquiring all the time; the very important ones were answered from his office, but he sent a general letter or letters explaining the various things that were uppermost in people's minds.

Q Well, the Going Banks at this time and always have had plenty to do to pay the expenses of their own examinations, haven't they?

A No; we had money appropriated for that.

Q Appropriated by whom, the legislature?

A The legislature.

Q For the operation of the Going Bank Department?

A For the operation of that department.

Q And it was that fund rather than any funds which had been prorated against going banks, which you used from, was it?

A Well, you understand the funds that are used in receiverships, that is chargeable and prorated to each trust.

Q All the trusts in receiverships, regardless?

A Yes. This is of a different nature.

Q But you have a different financing for your Going Bank Department. For the record, just state that. You have two sources of income, do you not, one from the State, from appropriation, and one where you make an assessment against going banks for examination?

A That is correct. To prorate that, there would be no way of knowing who got those letters; there would be no possible way of doing that; it is a matter of state-wide interest, therefore, it is charged to the State appropriation.

Q Do you regard Governor Bryan a member of your Department?

A He is not only a member but he is the head of the department.

Q And his orders had to be obeyed by every member of your department, including yourself? What I mean: he was the directing head?

A He was the head of the department.

Q Did you make any objection to the statement in the last paragraph of Exhibit 88 where he says the primary campaign will be April 12th, something to that effect—just read the last line of Exhibit 88, the last sentence.

A The last sentence is "I need your help in the Democratic primary April 12th so that I can protect your interests." I don't know as I ever saw this letter before.

Q Isn't that a political statement?

A Well, it depends on how you look at it.

Q Well, that is what Bryan hoped, that they would look at it as a political statement.

A Well, I don't know what he hoped. This was on April 5th; as far as that is concerned, there was no campaign on.

Q Yes—the letter says the primary is April 12th, and this letter is dated April 5th, and it requests as you stated. Now, being sent out at that time before a primary and stating he wanted to be reelected, don't you think that is the use of receiverships and going bank funds to further the political ambitions of a state official?

A It might be and might not be; I don't know; he had thousands upon thousands of letters during the year upon this topic. His own office wrote these letters generally.

Q Well, why didn't they send them at some other time rather than a week before the primaries?

A I had nothing to do with that.

MR. WATSON: That is all at this time.

WITNESS EXCUSED

E. H. LUIKART

Recalled as a witness, testified as follows:

BY MR. WATSON:

Q There is one question here given me by the committee: Who did you have an agreement with that was a stockholder in the Stella Bank, outside of Rhodes, that you were to get these extra shares of stock from, that you were to receive these extra shares of stock from the R. F. C. after the Government was paid off?

A There was no agreement with anybody, not even with Mr. Rhodes.

Q Why did you advise your relatives and others not to put up new capital, if you did, and then go ahead and pay your own assessment on the State Bank of Stella stock?

A I paid my assessment because for four years I had been encouraging and asking people to do that, and had I not been urging and arguing that point, I should not have paid it; that was the only reason.

Q Who paid the assessment on the stock your relatives turned in to the receivership?

A I don't know.

Q We had some information that the old stockholders of the State Bank of Stella had requested to examine the records so that they could find out if their stock was worth anything and whether to pay the assessment, and that your office refused to permit them to do so. What do you say to that?

A That is absolutely not true.

Q In the latter part of 1933, did you, as receiver, take over the assets of the Bank of Dorchester and have the R. F. C. check over these assets, and then find out that you could obtain a loan from the R. F. C. and make a payment to the depositors of that bank?

A I did that with that bank and many others.

Q After that, didn't you go to Governor Bryan and tell him that you could close a large number of banks in this state and make nice settlements from such loans, with the depositors, and he agreed with you?

A Well, that statement is very leading—here is the situation—(interrupted)

Q I think the word "nice" probably should be left out of the question. Just state your conversation.

A The R. F. C. would make loans on failed bank assets to the extent of 75 per cent of the appraised value of those assets. That would give the depositor immediately three-fourths of the value of the assets in a failed bank, and it is a very favorable thing for the depositor, and I urged that we do that where a bank failed, and we did do it wherever we thought there was enough value there to be in an amount sufficient to pay the depositors a good dividend.

Q Just explain the situation existing there with reference to a great many banks that were operating under House Roll 167 and Senate File 475, that, I suppose—were they insolvent?

A No; those were on the border line, most of them. That law was passed at the suggestion and with the advice and help of the department, for the purpose of protecting depositors in banks that might fail, because the deposits, after a bank went under that House Roll 167, had to be placed in a trust fund and would be paid back to the depositor if the bank failed, one hundred cents on the dollar. That made the situation so that if the bank could not

restore solvency or was not in position to go ahead, no new depositor would lose his deposit, and yet gave them a chance to serve the community and work out.

Q In that way the interest of the depositors who made new deposits in these banks on the border line or that were insolvent, as you said, would be protected?

A Would be protected.

Q After that time didn't you send an examiner to Malmo to close that bank, after December, 1933, and have some trouble there?

A Yes; we sent an examiner to Malmo; I believe the instructions were to check the bank and likely to take that bank over.

Q Who was that examiner?

A Larson.

Q Hadn't you given the people at Malmo or rather the officers of that bank until February 1, 1934, to get their bank into shape?

A I don't know whether there was any such deal as that or not.

Q What happened when Mr. Larson took charge of this bank?

A Well, he reported that a crowd gathered there and acted in a threatening manner, and he was fearful that there might be difficulty, and he came back to the department.

Q Then did you make a statement to the press that the examiner went to this bank by mistake?

A No.

Q Wasn't the Union State Bank of Ceresco also on the list to be closed that same week?

A I don't think so.

Q Was that Union State Bank of Ceresco closed?

A Oh, yes—Ceresco—I was thinking of Malmo—I don't know; it might have been.

Q Were they closed later?

A Why, I don't think the Union State Bank was closed.

Q I have a memorandum here that this bank had paid one hundred per cent. to the depositors, and voluntarily liquidated.

A That is my recollection; they were closed and worked that bank out.

Q Isn't it true the other bank in Ceresco is still open?

A I think so.

Q Did the depositors of this other bank take a large write-down in the assets?

A I think they did; I would have to consult the record on that.

Q Could you tell the committee from referring to your records how large a write-down they took?

A I could.

Q I would like to have you get that information.

A Just a moment—are you talking about the going bank?

Q We are talking about the depositors of the going bank—if they were asked to take a large write-down in the assets of the going bank?

A My recollection is that they were, but I am not positive about that; the records would disclose that.

Q You can bring those to us at a later time?

A Yes.

Q Mr. Williams would like to know why you would close a bank that paid one hundred cents on the dollar, and leave one badly impaired stay open?

A Well, occasionally an insolvent bank pays one hundred cents on the dollar, but that does not mean they have any capital; they can't run without capital; it is seldom—I know of no case where the stockholders got their money back; they get part of it back but never get one hundred cents on the dollar back.

Q This from the suggestion of a closed bank paying out one hundred per cent.: Did a bank in Dorchester that was closed pay about seventy per cent.?

A Yes, and I think that bank may pay one hundred; it is going to pay more.

Q And did the going bank in that town take a write-down?

A They did.

Q They are in good condition now?

A In my judgment they are.

Q Mr. Williams has a complaint that you sold Joint Stock Land Bank bonds from the receivership at Louisville, without the consent of the depositors' committee and against their wishes, with a $6000.00 loss on the book value of the bonds.

A I couldn't tell you about that without consulting the records on that.

Q Now, did you make clear whether or not you had given this Malmo bank until February 1, 1934, to effect a reorganization?

A I could tell by the record.

Q Well, Mr. Williams would like to know why, and the committee would like to know why you sent Mr. Larson there to close the bank on January 12th, if you had given this bank until February 1st to effect its reorganization.

A First, I don't know whether that is true or not, and secondly, I would have very good reasons for doing as I did.

Q And what were those reasons?

A I would have to look that up.

Q We would like to have you look that up. In the banks where depositors took a write-down, have you provided for any assets to be trusteed so that if there is any recovery on the assets written-down, the depositors will receive their prorata share of them?

A I think so, and in other cases we have provided that the bank, if it

succeeds, must pay all future profits to the depositors until they pay the deposits out; there are many cases like that.

Q Now, in the South Omaha State Bank we have found that a great many assets were charged off, that the liability ledger sheets showing the charged-off assets were retained by John S. McGurk as his personal property and never recovered for the receivership: We would like to know what the department does as to keeping a record of these charged-off assets of going banks in order to make sure they don't get out of the bank?

A Every time a bank is examined the examiner checks that up and makes a record of the charged-off assets, since I have been with the department.

Q Is there a schedule of the charged-off assets attached to the examination?

A As a part of the record.

Q Well then, in the case of the South Omaha State Bank you should have a complete file of the charged-off assets as part of that examination?

A Since my time we would have that.

Q If the receiver could find the record at the bank when he took charge?

A Since I took charge, that is true.

Q You were in charge at the time the South Omaha State Bank closed?

A Yes, and any notes that were charged off after I came into the department would show on the examiner's report.

Q Do you know where W. H. Rhodes, who was in charge at Stella, is today?

A I understand he is in Omaha.

Q Is he at work there?

A I don't know.

Q Will you make a statement for the record as to what, if anything, was done in regard to the request by Mr. Downing and Mr. Stoll to be relieved of the South Omaha situation?

A I relieved them of passing judgment on anything that was done, that is, they would come to me and I would then tell them what to do. As a matter of actual physical work I can't write the letters, all the letters, in that department—they run as high as 400 a day—but I would tell them what policy to pursue.

Q Did you consider those letters you got or the other receivership work interfered with your administration of the going bank department?

A I don't quite understand what you mean.

Q Do you consider that the work in the receivership department that you had to do interfered with your administration of the going banks or the banking department?

A No.

Q Then in these matters in which Stoll and Downing were relieved, you assumed those duties, did you?

A Well, as a matter of fact, it is my intention to see practically all that comes into the department and advise the various departments what action to take.

Q Well, I mean in the matter of decisions in regard to Drake and McGurk and those matters that Stoll and Downing didn't want to make the decisions upon: Did you make the decisions in those matters? I will ask you to examine a letter dated July 24, 1931, addressed to Mr. W. R. Scribner of Kearney, Nebraska, from John S. McGurk, president, South Omaha State Bank—this is Exhibit 5 at South Omaha—there is a statement in that letter where Mr. McGurk states: "I will also talk to Mr. Bob Drake of Omaha, who is a very close personal friend of Luikart, and ask Mr. Drake to telephone Luikart to pay some particular and specific attention to your application." I will ask if there were any relations between you and Drake and McGurk that made you want to be relieved of that situation?

A None, none whatever; he was not a particular personal friend of mine; he was an acquaintance; I saw him occasionally.

Q Did you ever have any business relations of any kind?

A None—none of any kind.

MR. WATSON: Well, I guess that is all unless you have something further to say.

MR. LUIKART: I want to make one statement at this time. In Mr. Saunders' testimony he said that we discussed my resigning and that I stated to him that I did not care to resign under fire. He did not say to you that I had consulted several judges in whose em ploy I am, whose agent I am, and they said they would not accept my resignation at this time, that they wanted to have me in that position in case something should develop where they would need me to explain, or anything that might be wrong that I would still be their agent and would be bound to them to aid, to explain anything that might come up in their trusts; that was a definite statement from several judges.

Q Will you give the names of those judges to the committee?

A I will not.

Q Well, why would they need you to explain these matters where they give their approval—do they rely entirely upon you without any independent investigation?

A No; there could easily have been a condition like this: I could have done things that they never knew about; if I had taken some action of which they had no notice, no knowledge, then they would want me where they could reach me and could ask me and have authority over me in such case.

Q Well, the committee realizes that you as receiver are nothing more than just a medium through which the court is operating; we understand that fully.

A Yes, sir.

Q But we just wanted that information generally, whether as a general practice—the question has been asked before, you know—whether as a general practice the judges rely more upon this centralized receivership division to make a more thorough investigation without their supervision than they do with a personal receiver?

A I don't know; I have had no experience with this kind of receiver—I have no knowledge.

MR. WATSON: I think that is all.

MR. LUIKART: I want to make one further statement: He talked about an agreement. The agreement was discussed and not drawn by myself but when that was drawn no one would father it; what I mean by that is nobody would sign that.

Q Oh, you didn't sign it either?

A I did sign it, but that is all there was to it; nobody else would sign it, so I take it it is no agreement.

MR. WATSON: Now, is there anything further that you wish to state on that?

MR. LUIKART: Not that I think of at this time.

MR. RADKE: There is just one suggestion in connection with Stella.

INTERROGATIONS BY MR. RADKE:

Q There is a letter in evidence in the record from Mr. Rhodes to you concerning something about stock. You recall that letter, do you?

A I do.

Q Do you care to make any statement further in connection with that letter, whether or not you answered that?

A I answered that letter very promptly.

Q Did you make a copy of that letter?

A Yes.

Q What became of the copy?

A It was placed in the department's files.

Q Have you searched for that copy?

A I have.

Q Have you found it?

A I have not.

Q Do you know what has become of it?

A I do not.

Q Have you inquired for it from the banking department?

A I have.

Q Have you had anybody give any reason why it isn't in there, in the files?

A Well, no one seems to know why it is not in the file.

Q Now, if you care to, could you give the substance of the reply that you wrote back to him?

A Well, it was about in this way: I wrote and asked Rhodes how he could possibly have stock to give to me and what he meant by offering me 35 or 50 shares of stock, asked him how he came by it, how he would have it to give. I knew he couldn't afford to pay for it, and that was the first intimation that I had there was something wrong down at Stella.

Q And did you then take action to discover what, if anything, was wrong?

A I did.

Q And what was done by you?

A I next wrote to the cashier, Mr. Wagner, and told him I wanted to see himself, the officers of the bank and the directors. I received no reply to that letter. I wrote a second letter asking why I had received no reply, and I am not clear as to whether he wrote why I hadn't or not, but I had urged him in this letter to come to Lincoln immediately, and he didn't come, and then I got in touch with them by phone and sent word down there they must come at once, and they didn't come up.

Q Did you attempt to get Mr. Rhodes to come in, did you state?

A I tried for ten days or two weeks to get him in here, and he wouldn't come. I had the directors and officers bring him up.

Q And then the directors came and that is the meeting that is referred to, of which a record was kept, I believe, and an exhibit is in evidence; is that it?

A That is correct.

BY MR. WATSON:

Q Mr. Luikart, what was the date of the letter that Rhodes wrote to you?

A I couldn't tell you.

Q Well, I think the exhibits will show that the letter he wrote to you was February 16, 1934. Now, you state in your letter of January 22, 1934: "In lieu of this stock will you please make out seven and one-half shares for G. A. Luikart and send the same to me, together with a memorandum of agreement that the preferred stock, after the Government has been paid, will be divided in such a manner so that he will receive twenty-five shares of stock and that Marion H. Luikart will receive a like amount, or a total of fifty shares." Now, the date of this letter was January 22, 1934. Mr. Rhodes' offer to give you thirty-five shares was dated February 16, 1934, a month later, and as a postmark in his handwriting on the bottom of Exhibit 29, your letter of January 22nd, he states: "Have been about three-fourths laid up with cold but will write you later." Now, what is the reason for the dates on these letters,

your suggestion of January 22nd being a month before his answer?

A I don't quite get the import of your question.

Q You suggest a total of fifty shares on January 22nd, and Mr. Rhodes writes you on February 16th, almost a month later, and that is the first time that he mentions you getting fifty shares. Do you mean to say that he didn't understand what you meant by your letter of January 22nd?

A I think he understood very well. In that letter I mentioned that when the preferred note was paid for, that they then could receive their share of the stock; that would be late, many years hence. His letter there indicates that he was going to give me some stock. I think that has nothing to do with preferred stock.

Q Let's see: He states in his letter of February 16, 1934: "When in Lincoln last I gave you the stock line-up, the same as is shown in our final application to R. F. C. You have been so mighty good to me that I feel under great obligations to you. Mrs. Rhodes and I have talked matters over at length and we in turn want to do something by way of showing our appreciation. We should like to have you accept thirty-five shares of the common stock, which, as you know is paid for by reason of the assessment I put up."

A Exactly—"that I put up".

Q He offered you thirty-five shares?

A Of common stock.

Q By reason of the assessment he had put up?

A Yes—how did he put it up? That is what aroused my suspicion.

Q Well, I think he intended to put it, from the testimony here, from his $16,250.00 which he claims he had at Falls City.

A Yes, but I knew nothing about that, and wouldn't know how he could get that much; I knew he couldn't give me thirty-five shares; that I did know.

Q Well, where were you to get the fifty shares?

A On this fifty shares here, when you sell preferred stock to the Reconstruction Finance Corporation, when the bank pays out after a number of years, you then get shares of stock; as I said before, it is customary to make a signed agreement as to who is to get that stock back, who is to benefit from the return of the stock; that is a common arrangement.

Q As far as the record shows here, the stock was to be issued to the person who had paid the assessment on the common stock.

A Yes; some had not paid the assessment; the record shows that here. Those that had paid in could get back the shares they might want of preferred for that amount.

Q You would have to pay the assessment to be entitled to the preferred stock?

A You might or might not.

Q You mean they would give it to you, some of the others?

A Many of them didn't want the stock, didn't want to be interested in the bank at all. Now, if I would care to sign a note for my son and daughter, for fifty shares of stock, that is preferred, as well as against the R. F. C., that you owe personally, if it isn't paid by the bank. If you sign that note you can then contract to get that stock back for yourself.

Q Who did you sign any such agreement with? You don't say anything in your letter here about offering to pay anything?

A I didn't sign a note, nor did my son and daughter sign a note; we determined not to go in on the note—that was all.

Q In this memorandum you include both the children, setting out the shares they are to receive, each, and signing as a bank official?

A If I had done that, I would have had a note to sign to the R. F. C. for the stock.

Q Do you think this man, as a bank official, should sign an agreement saying you were to get part of the preferred shares that somebody else paid the stock assessment on?

A Not at all; what I mean to say is that if the stockholders agree that the stock should be distributed so and so, that is naming the persons and how much, these persons who have signed the R. F. C. notes would get back that share.

Q It is unfortunate that you didn't set forth all that arrangement in your letter here of the 22nd.

A That was common practice known to the R. F. C. and the banks.

Q Was this arrangement as to how Rhodes was to pay his assessment, Was that known to the R. F. C.?

A It must have been, of course.

Q They knew that this man Rhodes was to borrow on his personal note at the Richardson County Bank?

A Certainly they did.

Q And set up a deposit in the bank of Stella?

A No; they didn't know he was to borrow at the Richardson County Bank—knew nothing about that part of it—indeed not.

Q Did you know that notes had been taken in payment of the assessment?

A I learned that, yes, sir.

Q On some of the shares?

A Yes sir.

Q And knowing that, did you approve Mr. Wagner's and Mr. Rhodes' certificate of Februray 2, 1934, Exhibit 26, where they say that the stock assessment has been paid in cash?

A What is the date of that?

Q February 2, 1934.

A I think at that time it was my understanding it had been paid in cash. I believe I learned at some later date they had given their notes; however, a note is considered the same as cash, if they borrow the money.

Q I recall seeing a letter here where he set out the names of the parties who had given notes for their stock assessment, and this letter was addressed to you.

A Yes—what is the date of it?

Q In a letter of January 11, 1934, from Rhodes to you, he says: "We have to the credit of our assessment account, the sum of $25,000.00. Of this amount the bank is carrying notes for its shareholders totaling about $4500.00, being as follows: Emil Nombalias, $500.00; J. H. Brey, D. S. Hinds, E. W. James, A. R. McMullen, $1,000.00 each. How's that?" Was that true? Was that the way those parties paid their stock assessments?

A Will you please find my reply to that letter?

Q Didn't he communicate with you at every stage of those transactions?

A Those things he wanted to communicate only; he didn't communicate anything to me he didn't want me to know.

Q I imagine your reply to that is your letter of January 22nd: I don't see any other letter, that is, in my file.

A Have you got the file of the department there where we wrote back and forth about this bank?

MR. WATSON: No, I have no files except my own memorandum that I made in going over this file. I think we will just adjourn until afternoon; it is 12:00 o'clock now and you are already late for your appointment; we will adjourn until 1:30.

(Adjournment taken until 1:30 P. M., October 23, 1935.)

E. H. LUIKART

Recalled as a witness, testified as follows:

EXAMINED BY MR. WATSON:

Q Mr. Luikart, do you know anything about this memorandum (handing memo to Mr. Luikart)?

A No, I don't. I know I was out at that bank some years ago. I know it to be a fact that there was an audit made by Hoagland.

Q Did the Governor request a copy of this Hoagland audit be given to him?

A Well, I imagine he did; I don't know; this would indicate that he did (referring to memorandum Exhibit 95).

Q And then you gave a copy to him as head of the department, did you?

A No, I don't believe I did; I don't remember having done that. If he called for it from anybody, he got it, of course.

Q Do you know whether he got that—she wouldn't give that to him without your knowledge, would she?

A I believe he did get it personally; I don't know.

Q Is there any way the committee could get a copy of that Hoagland audit?

A Well, I think they could, because there were always two copies made.

Q Were there any changes made in that audit after the Governor got hold of it?

A Not that I know of. What do you mean by changes?

Q In re-writing any part of it?

A You mean after he got it?

Q Yes.

A Well, I haven't seen it since; I don't know.

Q I see you have brought some papers along. Do you wish to put them in the record?

A Well, you asked me this morning about the Farmers & Merchants Bank ot Ceresco. I find in my records, stockholders and depositors agreement and waiver of withdrawal rights. In this agreement I find there was a write-down of 75 per cent. Further on in this agreement there is a consideration that the depositors write-down 75 per cent. and they are to receive this back if and when the bank earns it, and the bank continues in business and out of cumulative profits they were to pay back the profit to the depositors until 75 per cent. is restored before they can pay any dividends to themselves.

Q Have you any copies of that?

A I don't know whether there is extra copies or not; I think you can get one; they were probably made in duplicate—this is a signed copy, so this is a contract; we should keep that; this will be years and years in carrying it out.

Q Now, I intended to ask you this morning how many banks operating under House Roll 167 and this other Senate file—well, whatever it was—how many banks did you intend to close at the time you sent Mr. Larson to the Malmo Bank? It seems to me I was informed there were 106 that you intended to close at that time.

A I think that you have an erroneous idea. There was a time, about March, well, just about the time of the inauguration of the President, that this department sent out a number of examiners to close banks, just before the National Holiday.

Q That was February, 1933, or January, 1933?

A No— this was at the time, right at the time of the inauguration of President Roosevelt; I remember distinctly I was down at that inauguration and was there several days, and this occurred while I was away. Mr. Woods, who was then Bank Commissioner, sent out a great number of examiners and helpers and so forth to close quite

a number of banks, and then right in the face of that, before we got to that, this National Moratorium was declared by the President and that stopped the whole thing. I happen to have not been here when that started, or several days after that happened.

Q Now, you have some statement to make on the Malmo Bank?

A You are quite wrong about that situation here.

MR. WATSON: By the way, can we identify these two papers as Exhibit 96 and 96-A?

(Stockholders and depositors agreement and waiver of withdrawal rights of Farmers & Merchants Bank, Ceresco, Nebraska, identified as Exhibit 96 and 96-A)

Q Go ahead with your statement.

A Now, I find, going into the file, as a matter of fact, Mr. R. H. Larson, State Bank Examiner, was at Malmo—it must have been on January 15, 1934, and he wired the department as follows: "Department of Banking, Lincoln, Nebraska: In charge Farmers & Merchants Bank, Malmo. R. H. Larson, Bank Examiner." I think I said this morning that he went out and attempted to close the bank, but apparently from this telegram he actually took charge of the bank and wired to that effect.

Q Is that all you wish to state about that? Did you find a newspaper statement that you made at that time, in the file, anything?

A No, I didn't find it in any file. I went clear through it; in fact, we don't make a habit of clipping newspapers.

Q How many banks did you intend to close at that time when Mr. Larson was sent up there to Malmo?

A Well, I don't know—we don't intend to close any banks—that is very seldom.

Q I mean was there any pre-arranged instruction that Mr. Larson should close this bank at Malmo and other examiners were to close other banks, a total of 106 banks that were being operated under these two plans, under House Roll 167 and Senate File 475?

A No; I was trying to explain to you the only time I know of any large number of banks, was just before the national moratorium, and just before that the Banking Department started to do that under Banking Commissioner Woods, of which I had no knowledge. It wasn't thought of before I left.

Q Was the plan to arrange for a loan on the assets of the Malmo Bank, a loan from the R. F. C., as you had done or arranged to do with the Dorchester Bank?

A Yes, I think there was a plan, and I believe they were unable to get loans—wait a moment—that worked out this way: This bank was closed finally and an entirely new—the charter was taken up and then a new bank, what we call the home bank or some such name as that, was organized and took over the assets of the bank; that is

the way they cleaned up that bank, by the organization of the new bank.

Q What do you know about that situation at Genoa?

A Very little. That was quite a little time before I came to the department.

Q This Hoagland report—by whom was Hoagland hired?

A Hoagland was an accountant, C. P., I believe he was—at least he was an accountant—he was sent out by the department to audit the bank at Genoa.

Q During your jurisdiction?

A Yes.

Q And he submitted his report?

A Yes, sir, he did.

Q Was he discharged later?

A I believe he was.

Q How much later after he submitted his report?

A I don't remember, that could be found in the records; we could find when his services were terminated.

Q Now, is there any other copy of the Hoagland report to be found in the files anywhere?

A I believe there is; there is usually two of those.

Q I wish you would furnish us with a copy of that report, if you please—there have been so many rumors about it we would like to see one before we question the witnesses.

A I will see if it can be found.

Q Is there such a thing as an accredited list of newspapers which the department uses?

A I believe we have a list of papers or some sort of list of some papers; I never have seen it, but I believe there is such a list as that.

Q What is it used for?

A It is used to send notice of sales of bank assets, anything of that nature.

Q Legal notices?

A Yes.

Q Who made the list or who determined what papers should be in the list?

A I have no idea.

Q Was it in the department before you came there?

A Well, I assume it was.

Q Did Governor Bryan give you the list?

A He did not; I have never seen the list, but I understand there is such a list.

Q Who has the list, as you understand it?

A Well, those copies go out from the Legal Department and I would have to assume that they have the list, if there is one.

MR. WATSON: Unless there is something further you wish to state, I guess that is all.

MR. LUIKART: On any matter at all?

MR. WATSON: Yes.

MR. LUIKART: I thought it might be the thing to do unless you are privileged to appear. This matter of preferred stock in banks and liability on preferred stock in banks and preferred stock itself is rather complicated and hard to understand. It took me a long time to understand what the thing really meant in the end. In talking about that Stella Bank, I am not sure I made myself clear as to why and to whom the common stock would go after the preferred lien was paid off.

Q Go right ahead and tell us.

A Now, when a bank takes preferred stock, we will say they have enough capital left to have $5,000.00 of common, and it is necessary then to borrow $20,000.00 to maintain a capital of $25,000.00, the legal limit.

Q Which part is common and which preferred?

A $20,000.00 preferred and $5,000.00 common in this case we are speaking of. Until recently it took $25,000.00 in the state—you had to have $25,000.00 capital and $5,000.00 surplus to get a charter for a bank. Now, if a bank buys preferred stock, say for $20,000.00, if there are no arrangements made between the stockholders, those who retained their common stock are entitled to a prorata of common stock when it comes back, and the preferred stock is transferred to common stock. Or, if they don't want to take any more common stock, you could go in, any of you, and sign a note for that levy which you would have to pay. You could take the preferred stock which you would have a double liability on, if you do that, or one party can sign the note and they all agree to take their prorata share of liability and their prorata share of the stock, or, each stockholder can sign the note for his given amount, if he wants to do that, but if there is no agreement between the stockholders, this common stock is secured when it comes back and is paid off, and they can by agreement allow themselves to take that responsibility of that stock, who want to, and the R. F. C. will then abide by that agreement, and then they have got that stock according to that agreement.

Q Does that agreement have to be filed with the R. F. C.?

A With the R. F. C.

Q With the application?

A With the application, or afterwards, if they want to; they can do that any time.

Q Was there anything like that down at the Bank of Stella?

A No. What happened there was—I doubt if the officers knew their

rights; I don't know that they did, but in any event Rhodes signed the note for the whole $20,000.00.

Q Now, as far as the committee is concerned, we think there has been plenty of statements in the record with regard to the State Bank of Stella, and if there isn't anything further you want to say, we will regard the matter as closed.

A Now, is that clear to you, just what the matter is; I want that clear in the record. It is a rather complicated thing.

MR. WATSON: Yes, that is all right.

MR. RADKE: Let me ask a question there of Mr. Luikart.

MR. WATSON: Do you want the question, Mr. Luikart?

MR. LUIKART: Yes.

BY MR. RADKE:

Q If the R. F. C. loan was paid off by earnings of the bank, and there was no agreement as to who should get the common stock to be issued in place of the preferred when it is retired, then what is your interpretation as to who would be entitled to receive that new common stock?

A The holders of the old common stock in proportion to their holdings.

Q And the reason for that is what?

A Because they hold the stock of the bank and the bank having the money they paid for it, they naturally would be entitled to the earnings.

Q And therefore they would be entitled to receive that?

A That is correct.

Q If the person to whom the preferred stock is issued paid the lien off himself, then certainly he would be entitled to something in regard to that in the common stock that would be issued in place of the preferred: Isn't that right?

A He would get the new common stock.

MR. WATSON: Mr. Radke, that has all been gone over.

MR. RADKE: I didn't think it was very clear.

MR. LUIKART: I just wanted you to understand what it was all about.

WITNESS EXCUSED

E. H. LUIKART

Recalled as a witness, testified as follows:

EXAMINED BY MR. WATSON:

Q Mr. Luikart, will you please state to the committee whether you have been able to locate the Hoagland report on the Farmers State Bank of Genoa?

A No; I have not.

Q Where is it, to your knowledge?

A I don't know where it is.

Q The memorandum shows that it was delivered to the Governor, former Governor Charles W. Bryan. Has he still got it?

A Well, I don't know. I have made inquiry; he is not at his office, but his secretary said she would after hours go through his papers and tomorrow at 8:30, and see if she could find any.

Q If you will then obtain that back into the records of the banking department so it will be available for the committee, we would like to have it.

A I will be very glad to get it for you if I possibly can.

Q Have you ever heard of any part of that record being changed?

A No. I have heard in the last three minutes.

Q Outside of what you have heard here?

A No; I have not.

WITNESS EXCUSED

JOHN C. BYRNES,

of lawful age, being first duly examined, cautioned and sworn, deposeth and sayeth as follows, viz:

EXAMINED BY MR. WATSON:

Q Give your name and address to the reporter.

A John C. Byrnes, Columbus.

Q Mr. Byrnes, what is your business?

A Well, my local business—of course, I am employed temporarily with the Agricultural Credit Corporation, but my regular business is real estate, loans and insurance at Columbus.

Q And have you any firm name?

A Well, Brynes & Gietzen.

Q Now, have you ever been connected with the Banking Department of the State of Nebraska?

A Not that I know of.

Q Do you sell insurance personally?

A Yes, sir; I used to when I was home.

Q Do you write bonds for people now?

A I do.

Q State officials?

A I do.

Q Have you ever written any bonds for receivers or officials of the State Banking Department?

A I probably can explain that in this way:

I think it was in 1931 that my friend, Mr. Bryan, got in some road fight up in the north part of the State, and of course Charley and I didn't always agree; and he patted me on the back after the row was over and he said, "Say, John, you go down and see Luikart and have him give you some receivership bonds. We have lots of them." I said, "All right." He said, "Tell him I said so." So I went down and saw Ed and told him what the Governor had recommended me to do. Well, he said, "You know these receivership bonds, they're written"—I think he said they were mostly written in the National Surety—"and those bonds don't expire until the receiver is discharged. The premium, however, is paid annually by the Banking Department."

"Now," he says, "if Mr. Bryan wants you to have the commissions, we can't disturb those bonds, but if he wants you to have the commissions I can see that you get some." Well, I said, "That's very fine."

So, I suppose, beginning a month or two after that I began to receive checks from the National Surety Company for commissions. The number of the bonds, I never kept track of that, because I wasn't the agent for the National Surety.

Well, I think the last—of course, it dwindled, because they

were passing out and a good many of the receivers being discharged; and I think a month or two ago was the last check that I received, either $15 or $10; I am not positive.

The National Surety office, if they was subpoenaed, they would have those cancelled checks.

Q Now, all that money that you received was to be yours wholly and entirely, to do with as you pleased?

A My commissions were mine directly.

Q There was no obligation on your part to use those bonds in any other way but for your own interest?

A Absolutely.

Q Were you given a statement in each case as to what the commission represented?

A I think I received a receipt, if I remember correctly, in a letter, and I think the check—I think there was an endorsement somewhere on the checks, as I remember, indicating the number of the bond.

Q Did you do any work or fill out any applications, or anything like that in the way of service in the application for these bonds?

A What do you mean?

Q Well, was there any physical act that you made that could be regarded as something you did for the Banking Department in return for this money?

A I assumed that it was complimentary on the part of the Governor, on account of the things that I had done for him in the campaign.

Q In the campaign?

A Yes, sir.

Q Have you been pretty active for him in campaigns?

A Well, I have always voted the Democratic ticket and I have always supported him when he was nominated.

Q Contribute to him?

A Not to him directly. Of course, I contributed to the State and county campaign funds.

Q Are your contributions a very substantial sum, or what I mean to say: were you ever asked to contribute any percentage of the money that you received or any part of the money that you received?

A No.

Q (By Mr. Williams) Were these applications written here in the Department for those bonds?

A Well, I assumed that somebody did; I don't know whether it was the receiver or somebody else. You see, I never saw those.

Q (Mr.Watson resuming) You never had a thing to do with the matter except to get the checks?

A I got the checks.

Q (By Mr. Fulk) Were you licensed as an agent under the National Surety Company?

A No, sir.

Q (Mr. Watson resuming) Were you licensed to write bonds at any time?

A You mean for the National Surety?

Q Yes.

A No. That's where these checks came from, and I wasn't representing the National Surety Company.

Q As a matter of fact, you weren't licensed to write bonds were you?

A Yes, in other companies, but not in the National Surety; but these bonds that he turned to me, or these commissions that I received, all apparently were National Surety bonds.

Q Who mailed you the checks?

A Fred Liles. He's the man that signed the checks.

Q Did they come to you from Mr. Luikart?

A Now, wait a minute. I think that part of those come through Mr. Stoll.

Q And from Mr. Stoll, who sends them direct to you?

A To me, yes.

Q And do you know if the part that you got was one-third of the whole premium in those cases or half of it or the whole premium?

A No, I don't know.

Q You just know that you got a check?

A I know I got the check.

Q Did you ever rebate any of these funds to anyone?

A No, sir.

Q Were you ever asked to?

A No, sir.

Q Mr. Luikart never got any of the funds that you got?

A I never owed him anything.

Q Do you know whether he got any part of the commissions in the same way?

A I don't know. All I got was the checks.

Q Well, your testimony and your frankness is refreshing, and I thank you for it. Are there any other questions?

A If anything else comes up that I can help you, call me up, boys.

(Witness excused)

F. C. RADKE

After first being duly sworn, testified as follows:

EXAMINED BY

MR. WATSON:

Q Will you please give your name and address to the reporter?

A F. C. Radke; 2114 B Street, Lincoln, Nebraska.

Q Are you employed by the Banking Department, Mr. Radke.

A I am employed by the Bank Department as Receiver of failed banks, and by the Receiver of Failed Banks, Judicial Receiverships—I can restate that and make it a little bit clearer: I am employed by the Banking Department where it is acting in its capacity as Receiver and Liquidating Agent of Failed State Banks and by the Judicial Receiver of Failed State Banks.

Q At the present time who are the heads of those departments?

A B. N. Saunders, Superintendent of Banks, the officer charged with the work in liquidation of banks in administrative receivership under the Act of 1933, and E. H. Luikart, Judicial Receiver of Failed Banks.

Q Do you serve Mr. B. N. Saunders as attorney for the Going Bank Department under your present duties?

A I am not so employed but I am often called to assist in work with the going banks.

Q State by whom you were employed before you became connected with the Bank Department.

A I don't think I was employed.

Q Well, any business connections you had, then.

A How far back do you want me to go? I can give you my history, if you want it.

Q Have you ever been connected with any bank?

A No.

Q What has been your business?

A I am a lawyer.

Q How long have you practiced law?

A Since June 11, 1917.

Q And are you in practice alone or have you been connected with a firm?

A At one time I was a member of a firm; that firm was Burket and Radke, at Hartington in Cedar County, Nebraska.

Q Have you always practiced law in Nebraska—I mean that has been your residence?

A Oh, yes.

Q And where in Nebraska?

A I started the practice of law with A. G. Wolfenbarger in Lincoln in the summer of 1917, just previous to my enlistment.

Q Which Mr. Burket is that, that you referred to?
A Mr. H. E. Burket, cousin of the former Senator from Nebraska.
Q Have you been connected with any other firm?
A No.
Q Have you been attorney for a bank at any time?
A I don't believe so; I have been on the other side considerable.
Q Have you ever owned stock in any bank?
A Never did.
Q Have you ever owned any stock in any bank of any kind, in any building and loan association, trust company or joint stock land bank?
A Never! never owned stock of any bank.
Q Under what statute of the banking law do you obtain your powers as an attorney?
A Well, I obtain it from my employment by the Receiver.
Q Well, I mean what part of the banking laws empower Receivers to appoint you?
A Under Sec. 8-194, Compiled Statutes, Supplement, 1933.
Q Will you read that please?
A (Reading) "The Superintendent of Banks may, under his hand and official seal, appoint such special deputies or assistants as he may find necessary for the efficient and economical liquidation of insolvent banks, with powers specified in the certificate of appointment, to assist him in the liquidation, the certificate to be filed in the office of the Superintendent of Banks and a certified copy in the office of the clerk of the district court of the county in which such bank is located. He may also employ such counsel and expert assistants as may be necessary to perform the work of liquidation. He shall, subject to the approval of the district court of the county in which the insolvent bank is located, fix the compensation for the services rendered by such special deputies, assistants and counsel which shall be taxed as costs of the liquidation. He may discharge such special deputies, assistants or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another."
Q What is that section you read?
A Section 8-194, Compiled Statutes, 1933.
Q Isn't there another title to that 8-194 (a)?
A Yes.
Q And another section 8-194 (b)?
A Yes.
Q When did section 8-194 (a) go into effect?
A That had the emergency clause attached to it and went into effect, oh, either May 9, 1935, or May 10.
Q And when did section 8-194 (b) go into effect?

A Three months after the legislature adjourned, which would be about August 8th, 9th or 10th.

Q Now, there is nothing in Section 8-194 (b) which refers to counsel, is there?

A I don't think so; the whole purpose of that was the mileage.

Q On Friday, didn't you spend considerable time telling me in my position as presiding examiner that a statute was repealed by the amending statute, in that case?

A Yes.

Q Where can you find any authority in the laws for the Superintendent of Banks to employ any counsel? Isn't that the section you just read, Section 8-194 (a)?

A When was the Section 8-194 (b) approved?

Q It was approved May 13th, I believe.

A I don't know; I didn't look that up.

Q Well, as a matter of fact, if that is an amendment of the same section, it would repeal it? Isn't it a fact you really get your powers from another section of the statute, 8-1124, which gives the Superintendent of Banks the right to employ attorneys and fix their compensation with the approval of the Governor—passed May 13, 1933?

A I will say this, Section 8-194 (b) did not attempt to repeal what is now Section 8-194 (a), which was a section of the 1933 Banking Act, and it did not repeal it by implication.

Q Didn't you follow me out in the hall and tell me an amending statute always repeals the statute being amended?

A Yes, the original section.

Q And this one going into effect August 9th amends the previous section?

A No, it doesn't.

Q Isn't that what you told me?

A No, I didn't.

Q You read into the record there with regard to that five cent charge?

A No, sir.

Q Well, we don't want to waste any time on that. I just wanted to know if you knew.

A This Section 194-b repeals the original section same as 8-194 (a) repealed the original section, but 8-194 (b) does not attempt to repeal Section 8-194 (a), which was a part of the Banking Act.

Q Were you present at the conference April 2, 1934, in Lincoln, with relation to the Bank of Stella?

A Yes, sir.

Q Have you reported the facts to the Attorney General or County Attorney of Richardson County?

A No, sir.

Q Was a fraud committed when W. H. Rhodes paid his personal note to the Richardson County Bank of Falls City with the funds of the Bank of Stella?

A Well, my personal opinion is that he was attempting to commit a fraud, perhaps on the creditors of the bank, and especially on the other stockholders of the bank.

Q Was that your opinion at the time you heard the facts on April 2, 1934, as a member of the conference?

A Yes, sir.

Q Did you make any report of that to any officer of the law?

A No.

Q Such as the County Attorney or Attorney General?

A No.

Q What is your practice concerning fraud brought to your attention in the course of your duty?

A Well, my practice is to try to recover what the bank has lost through the fraud.

Q You would pay attention only to the civil side and nothing in regard to the criminal?

A Absolutely; my work is liquidation and to get all the money possible for the creditors.

Q Have you any duty to report such facts to the Attorney General?

A I don't think I have.

Q Then you won't say that you have made a bona fide effort to have prosecutions commenced on all fraud brought to your attention?

A No; I paid no attention to the criminal part of it; I had my hands full with my work in attempting to recover assets for the bank, and that was all of my employment.

Q Who should bring such matters to the attention of the County Attorney or Attorney General, under your interpretation of the law?

A Oh, I think the statute provides whose duty that is.

Q Well, who should, under your interpretation?

A Well, I think perhaps the Receiver, if he discovers some fraud, ought to call it to the attention of the County Attorney of the County where the bank is, although there is no statute I have ever seen at least that requires that of him, but I think, as a matter of general practice, it would be a very good thing if he did do that.

Q Do you remember the facts in connection with the sale of $12,000.00 of the Lincoln Joint Stock Land Bank bonds belonging to the bank of Ragan, which were placed with Harlan County as security for the county deposit?

A Well, I knew nothing about the sale when it took place, no.

Q Have you heard anything about it since?

A Since, yes.

Q When did you first hear about it?

A I don't remember.

Q To whom did those bonds belong at the time they were sold to the Lincoln Joint Stock Land Bank by W. C. Oelkers?

A I can only give you my opinion on that: do you want that?

Q Yes; that is what I want.

A It is my opinion that the bonds were assets of the bank, that they were only pledged as security for the deposit of the county, but that title did not pass to the county; what the county had, in my opinion, was only a lien.

Q As owner of the title did the bank receive the full proceeds of those bonds?

A Well, I don't believe they did; that is why we brought an action to recover.

Q If not, how much did Mr. Oelkers retain?

A I don't remember the figures, but I think it was somewhere in the neighborhood of $700 or $800.

Q I will refer you to an exhibit which was No. 9 when we took depositions at Ragan, and which is a memorandum from Mr. Hedge, the Auditor, to you, from which you may refresh your recollection and reply to these questions. Did you receive that?

A Yes.

MR. WATSON: We will have this identified as Exhibit 65.

Q Can you tell now, if the bank received the full proceeds of those bonds?

A I don't think they did; that is my opinion.

Q Well, as stated to you by the facts furnished you by the Auditor of your department?

A Well, the conclusion is there that we didn't get the right amount, and it still remains to be seen whether our theory of the case is correct.

Q You relied upon what was stated to you by Mr. Hedge as being correct?

A Oh yes, yes, sir.

Q And from that memorandum, does it state the fact as to whether you received the full proceeds of those bonds?

A The memorandum states that we didn't receive—in all probability we have got something coming here.

Q How much money did Mr. Oelkers retain?

A It states here the excess received from the bonds amounts to $458.60.

Q Did you report the facts of this transaction to the Attorney General?

A No.

Q Do you know who was Attorney General at that time?

A Well, let's see the date—I think it was Paul Good, 1934—yes; it was Paul Good.

Q What was the date of the memorandum?

A May 2, 1934.

Q And when did the sale take place?

A The transfer of the securities from this escrow?

Q No—the date of the sale to the bank?

A The transfer then was April 12, 1932, at which time they were sold, so the Auditor states.

Q They were sold April 12, 1932?

A I presume that is correct.

Q What does the memorandum from Mr. Hedge state in regard to the Receiver's wish in the matter?

A I think that states that wish, that suit be brought to recover whatever excess there might have been.

Q And who was the Receiver?

A I think this was a judicial receivership and Luikart was.

Q Does it say in the statement?

A Yes; it says Mr. Luikart's wish that suit be brought for an accounting.

Q Is that the first information you had about this transaction?

A I think it is—well, perhaps not; I think maybe Mr. Hedge came in and we discussed the matter, and I asked him to make a statement of it in writing to me so that I would have a record of it—just how long before I received the memorandum, I don't know—I can't say.

Q In accordance with that request, did you file suit against the county for the excess proceeds?

A Yes; we filed a suit.

Q Did you make Mr. Oelkers a defendant, too?

A I don't recall, but I believe he was a defendant. Now, I had my first assistant, Mr. Nye, draw the pleadings and file the action, and prepare the case for trial.

Q Are you sure Mr. Oelkers was made defendant there? It is my impression that he was not?

A Well, I had some sort of idea in my mind that he was; maybe service couldn't be had on him—that might be—it may be just against the county. I could get my files on that and tell you.

Q I wish you would send for that file and find out.

A Well, it is not in my office; Mr. Nye has it.

Q Who is Mr. Nye?

A Barlow Nye.

Q Was he your assistant counsel?

A Yes; he had conducted similar litigation in Holt County and had briefed this particular kind of a case, and, of course, at that time he was working for me, and I am having him continue with the work as he is familiar with that kind of a case.

Q Well, we will let that matter go until you get your file. Did you

consider that there was anything irregular about the manner in which Mr. Oelkers handled the funds which he retained?

A Irregular—yes.

Q Do you think there was any fraud committed?

A Well, I believe that there was an intent to defraud the Receivership.

Q Now, do you recall the matter of the appointment of the Receiver of the Security State Bank of Homer, Nebraska?

A Let's see—what year was that?

Q That was where they have a local receiver: you don't have many cases like that, do you?

A We don't have many cases—yes; I was present at the time.

Q Did you file the application in the name of the receivership department for Mr. E. H. Luikart to be appointed as receiver?

A No; the Attorney General filed the petition.

Q The Attorney General files those applications: did they have an attorney present to argue this, too?

A I don't believe they did.

Q You usually handle those matters for the attorney general?

A This is what would happen: there would be no resistance whatever, and the court when the day came for the hearing, all there would be left to do was just sign the order.

Q The matter was filed in the name of Paul Good, Attorney General, wasn't it?

A Well, if you can tell me what year that took place in, I could tell you in a minute; if it took place during the years 1933 and 1934, why, it was Paul Good.

Q Here is a copy of the order appointing the Receiver as furnished to us by the County Attorney, Fuhrman, who was the attorney for the protesting creditors at that time.

A Fuhrman was his name.

Q Will you examine that and state whether or not that is the order, do you remember it?

A I never saw the order that I know of. All I saw was this: the court announced he was going to appoint the person that—(interrupted).

Q Frank Church, I believe?

A Yes; he was connected with the bank.

Q Mr. Church had been working as a bookkeeper in the bank?

A He was connected in some way with the bank there, as bookkeeper or officer of some kind, I don't know which.

Q Of the Security State Bank of Homer, the one that failed: am I not right?

A Yes; I think that is right.

Q He had been working for the bank that failed up to the time it closed?

A Yes.

Q Now, who filed the petition in intervention in that case for the appointment of Mr. Church as receiver?

A I don't know who the persons were.

Q You have copies of those?

A I think that Attorney Fuhrman represented them, whoever they were.

Q That appointment was made April 8, 1933, was it not?

A If this copy here is correct, that is the date of the order.

Q Did you approve that order, that finding?

A I didn't approve anything in connection with it.

Q Did you ever appeal from that order?

A No, sir. Do you want to know the reason why?

Q Our investigation showed that the depositors filed one petition of intervention, some of them, with their names listed, claiming to represent ninety per cent of the deposits; did you require proof that they did represent ninety per cent of the deposits?

A No; there were a number of people there testifying that they had signed the petition. I thought they would testify—(interrupted).

Q Did you require proof that the total of people testifying or who had given written consent to Mr. Church as Receiver, owned ninety per cent of the deposits?

A No, that wasn't within my province.

Q Your province was to resist that petition, wasn't it?

A Not necessarily.

Q I mean resist the petition of intervention asking Mr. Church be appointed Receiver—wasn't it?

A I was attempting there to have the Attorney General's petition approved so far as the appointment of Receiver was concerned.

Q That would mean that you would have to resist the petition of intervention?

A It was in conflict with the petition of intervention, that is true.

Q Didn't the law provide there that Mr. Luikart should be the Receiver of the bank?

A No.

Q What did the law provide?

A The law provided that the Court should appoint a Receiver and the legislature cannot interfere with the control or dictate to him who shall be appointed.

Q And that is under—

A Section 8-192.

Q Under the decision in State against State Bank of Minatare, is it not, 123 Neb. 109; 242 N. W. 278?

A Yes, sir. I briefed that case twice.

Q But what did the State law provide as to who should be Receiver in case there was no opposition?

A They didn't make any such provision as you imply by your question.

Q That is what I want to know.

A Well, I can tell you what it provided: It says this—that the secretary of the Department of Trade and Commerce shall be the sole and only Receiver of failed or insolvent State banks; and the Supreme Court in that Minatare case said if that act is mandatory and means what it says, it is unconstitutional, so they disregarded it; it says that the only thing it could mean was a nomination only.

Q That was Section 8-192 of the Compiled Statutes of Nebraska, 1929?

A Yes.

Q It reads: "The Secretary of the Department of Trade and Commerce shall be the sole and only receiver of failed or insolvent banks and shall serve as such without compensation other than his compensation as secretary of said department." Now, are there any other cases to your knowledge in the State of Nebraska where a local receiver is in charge of a receivership?

A Yes; I think there is one in Winnebago, if it hasn't been closed out yet.

Q That bank is partly owned by the same Ashford family that owns the Homer bank, isn't that right?

A Yes, sir; that is my recollection.

Q Wasn't there on file with this Court another petition of intervention in which the stockholders of the Homer bank asked that their bookkeeper be appointed as receiver of the bank, they being George W. Ashford, William Ryan, Julia Ryan, Paul Ashford, Thomas Ashford and Margaret Maxwell: did you make any effort to see that an impartial receiver other than the former bookkeeper for these stockholders should be appointed Receiver for the bank?

A I made all the effort possible to get Mr. Luikart appointed at that time, and there was considerable evidence taken, and I believe all these facts appeared there, that they were stockholders and officers and so on, and that the best thing to do in that situation would be to have somebody other than a local man there; however, the court had a different idea.

Q What supervision has the department had over that receivership since the local man was appointed?

A None whatever, and to make a point clear there, the department, in my opinion, has no supervision at all over any of these judicial receiverships.

Q Which they certainly should have?

A Well, I am convinced that is best.

Q If the law does not provide it, it should provide it.

A And no law could provide it.

Q Your interpretation is there is nothing in the law that gives the Department the right of supervision of receiverships?

A Absolutely not and in my opinion the legislature has no right.

Q And in your opinion also, the court has a right to appoint a receiver, no matter who he is, even though he may be an officer of the bank before it closed?

A That is absolutely right, and the Supreme Court says so. I differed with the Supreme Court at the same time but there were too many against me.

Q How do you feel now?

A I think maybe they are correct in the law. I understand at that time—I at least convinced one of those judges that I am right.

Q Mr. Luikart says that although he argued the case against Mr. Skiles and Mr. Beynon, Attorneys for Mr. Bliss, nevertheless he has changed his opinion now, and he thinks maybe he spent a lot of the state's money unnecessarily at that time because he thinks now he is not in the position Mr. Bliss was then.

A Mr. Watson, you are stating a lot of things to be facts which don't appear in that case at all.

Q I will stand on the record.

A All right—Mr. Bliss was not a party to that litigation in any way, shape or form.

Q He was not?

A No.

Q Wasn't he the one you tried to remove? Maybe I have misinterpreted.

A In that case—in the other case out there in that district, Mr. Bliss resigned and the question was the appointment of a new receiver. The Judge appointed a Mr. Torgeson, over the request of Mr. Luikart who was then Secretary of the Department of Trade and Commerce and apparently the person to be appointed.

Q In that particular case?

A Yes.

Q What about the other cases? Were not there other cases filed in every jurisdiction where Bliss was involved?

A Oh yes, yes.

Q Weren't they decided by the Supreme Court at the same time?

A No, to begin with, in this county there were nine banks in which the court entered an order to change receivers, and up in the ninth district, and in the eighth district, and also down at Omaha, that district and several others, but after a few of them had been changed, Mr. Bliss agreed to resign, do it in a regular orderly method, and he resigned out there in that district at Scottsbluff.

Q Well, all I do know is what Mr. Luikart said here in regard to that matter; I haven't investigated that, but I understood him to say that the Supreme Court decided in favor of the position that Mr. Bliss took.

A That is exactly the fact—no, not the position that Bliss took—the position that the District Court took.

Q With this Torgeson man?

A Yes. Mr. Bliss didn't take any position of that kind, and I see Mr. Beynon here, who will verify that. He was present.

MR. WATSON: With reference to the bank of Ragan, Mr. Radke now has his files and will give us the figures.

MR. RADKE: Well, I don't have the figures, but have the title of that case: that is Luikart, Receiver, vs. The County of Harlan and A. A. Lideen, first real name unknown, County Treasurer of the County of Harlan. Oelkers was not included as the defendant in there.

Q Who was Mr. Lideen, the County Treasurer, you say?

A Yes.

Q And can you tell me about the disposition of the case?

A It is pending. It is ready for trial; we are ready. We had some difficulty in getting the issues made up, but it is ready for trial. We will try it the next term or sooner if we can get a special term.

Q You say you had some trouble in having the issues made up; what do you mean by that?

A Motions, demurrer, and the like.

Q Are they all disposed of now?

A Everything now. The case is ready for trial.

Q The reason I ask that, there has been complaint in another matter where there was considerable delay in a suit at Wisner, which I shall take up later, but at the present time let us get back to this question at Homer. Now, the Supreme Court decision held that statute Sec. 8-192 was not mandatory, that the Governor or legislature cannot change or modify judicial orders or lawfully require the court to do so, and that the appointment of necessary receiver is a judicial function based upon the constitutional powers of the courts, independent of legislative enactment. That decision had been handed down prior to the appointment of the receiver at Homer.

A I would think so; that was definite and certain at that time; otherwise, there would have been room for an appeal there to determine the matter.

Q But your department would be helpless to have any supervision over that local receiver?

A Absolutely and completely; a judicial receivership is the agent of the court and no one else.

Q Now, there is another section of the statute, 8-189, with reference to the return of the bank to the officers, stockholders and directors, when they put up a bond with a surety company, an incorporated surety company, conditioned upon the payment of all the liability?

A Yes.

Q Then the department, although it returns the affairs to the stockholders in that case for liquidating the liabilities, still the department has a right to supervise the liquidation; in your opinion do you see any way the provisions of that statute could give you the right to supervise the conduct of this receivership?

A No, because section 8-189 takes place previous to receivership, where the department takes over the bank for justifiable reasons, and then before there is a receiver appointed or under Section 8-189, before the statutory receivership, before declaration of insolvency, if the officers provide this bond which insures the payment of all creditors —(interrupted)

Q Have you had any such cases?

A Not exactly—quasi perhaps—Cedar Rapids and Albion.

Q Cedar Rapids and Albion? What were the cases there?

A The cases there were rather peculiar; I don't think they proceeded under this, but a substitute proposition for it, where by contract the stockholders and officers guaranteed the payment of all creditors in full and by certain definite times, and the creditors—(interrupted).

Q There was no bond with an incorporated surety company, but the stockholders put up a bond?

A And we accepted that here.

MR. E. H. LUIKART: There was one at Ogallala.

MR. WATSON: There was one at Hershey, too.

MR. RADKE: Oh yes, I guess that is right, but that wasn't recently. The one I know about at Ogallala, was really a receivership by which the Receivership Department, under Section 8-189, as receiver sold the assets, I think, to one person, which was agreed to by all parties.

MR. WATSON: I have heard something about that case.

MR. RADKE: And he is liquidating, rather, he paid all creditors—that is what he did; the receivership was closed, and that is the end of it so far as the department is concerned. He bid sufficient to pay out everybody.

Q The depositors have all been paid in full at Ogallala?

A That is my recollection of it.

Q At Albion and Cedar Rapids there was a guarantee put up; it wasn't a bond of an incorporated surety?

A No; it was a guarantee.

Q Who approved that guarantee?

A I don't know; I think Mr. Woods was Bank Commissioner and did that.

Q Do you know the details of the proposition at Hershey?

A No—didn't know there was a proposition out there; it never came to my attention.

Q As I recall it was at Hershey, the receivership in that district where the bank was left in charge of the stockholders after it was closed

for some time while they tried to get the other stockholders to sign such a contract; they got a number of the stockholders to sign up but not enough under the law, so they decided to liquidate the bank; then, after they had been in charge quite a while for the department, they turned it over to the department. We won't say that happened anywhere, but if that happened anywhere, what would your opinion be about the right to leave the stockholders in charge in such a case?

A Well, personally I think that is irregular and shouldn't be permitted; however, may I—(interrupted).

Q Did Mr. Nye or someone write an opinion for your office in such a matter?

A Well, he and I both wrote that same opinion.

Q And you objected to that?

A I would say it is irregular and not the method provided by statute. Of course, here at Albion and Cedar Rapids, the people wanted it and the people got what they wanted, and after they got it they criticized everybody for letting them have what they wanted.

Q Have the depositors been paid in full at Cedar Rapids and Albion?

A No. In my opinion they never will be.

Q The guarantee turned out no good?

A Yes. In other words the creditors of that bank exercised just as bad judgment as the officers of the bank did with respect to the assets of that bank.

Q Do you know about the Lewellen case?

A No.

Q Do you know whether they took a guarantee in that case?

A There was a guarantee of some kind; I don't know any of the facts in that case; I can't testify to it.

Q Our investigation shows they took a personal guarantee there, not a surety bond; how is the department justified in taking a personal guarantee rather than a surety bond?

A The bond is good.

Q Does the statute allow any other kind of guarantee besides a bond of an incorporated surety company?

A It says "shall give good and sufficient bond running to the department of banking with an incorporated surety company authorized by the laws of this State to transact such business."

Q Now, reverting to the Homer matter again, what about violations of law that may have been committed by former bankers of the Security State Bank of Homer? What supervision have you over that?

A None, absolutely none.

Q In this particular bank our investigation shows, and from the inventory filed with the court in that case, that there were a great

many tenant, notes; the Ashford family, which owned the bank, had many tenants in that county; John Ashford owed $5,200.00, the excess loan limit, and besides was endorser on a great many of these tenants' notes—he owed over $20,000.00 as endorser and $5200.00 as maker: is there any way, in view of this, what I have said, that he could be prosecuted for excess loans?

A If there are excess loans I presume he could be prosecuted but I doubt—(interrupted).

Q You would have confined your investigation to your duty to supervise before the receiver was appointed?

A Yes, sir, and as to this matter of excess loans, the critical part of that is it is very impractical—I say impractical—I mean that on this basis: assume you have got a going bank here; there are excess loans appear; now then, what is the department's duty or the County Attorney's duty or the Attorney General's duty with respect to prosecuting? Let us assume that they go ahead; immediately you wreck the bank; there is just no question about that.

Q What about prosecution after the bank has failed?

A That is a good time to prosecute, if you are going to prosecute on that.

Q But the penalty is very insignificant, is it not, a $500.00 fine?

A It doesn't amount to anything.

Q But there is another provision, Section 8-159, which says any violation of this excess loan statute will make the bank officer liable on his bond, are those prosecutions on the bond made?

A We have had several such cases and gotten judgment at Verdigre, and are prosecuting one now at Calloway.

Q And where else?

A There is one being prosecuted in South Omaha now; we have one on file—I think we were transferred to the Federal Court but—(interrupted).

Q I understand you were transferred to the Federal Court there: does that frequently happen?

A They always attempt it. Now, here is the idea: if, and when we have a case like out there at Calloway, where under the 1933 Banking Act the Department is the Receiver and liquidating agent, they will not be successful in retaining that case in the Federal Court; the reason is that the department is an agency or part of the state government and where the state is the party to the action it stays in the state courts or will be remanded.

Q Now, who is the surety company in that South Omaha case that was transferred to the Federal Court?

A I don't recall.

Q Now, if criminal prosecutions were brought and civil actions on the bond, directly against the directors, were brought against these for-

mer officers, don't you think that would have a salutary effect on officers in going banks?

A I don't know; we seem to be confronted with the same situations no matter when you prosecute or how many go down to the penitentiary; they still seem to violate the law, take a chance and finally it turns out to be a violation. Referring back to Homer, this idea runs in my mind, on the hearing there on the appointment of the receiver, many of these facts came out in the evidence that you have recited in regard to the Ashfords and their large number of tenants—(interrupted).

Q I am going to get to the reason why the receiver was appointed there.

A The court had most of those facts before it at the time.

Q Now, you have stated no appeal was taken from the appointment of this receiver?

A No; it couldn't be.

Q Why not? It was a final order of court, wasn't it?

A Yes, but you have got to have an interest in it.

Q Well, why didn't the state have an interest in it?

A Well, the Attorney General could have appealed it.

Q Well, who was the Attorney General in 1933?

A Mr. Paul Good.

Q Why didn't he appeal it?

A I don't know.

Q He never has told you?

A No.

Q But you represented him at the trial?

A In a measure; I was not commissioned as Attorney General—perhaps I was by permission.

Q Maybe he was depending on you for the suggestion.

A Well, he knew that he filed the case and that I furnished all the—or at least conducted the trial, and he knew what the results were.

Q Isn't it your policy to put up a vigorous fight to have the court appoint the department receiver in all other localities?

A It was then; of course, it isn't any more because it isn't a matter of judicial determination any more.

Q I mean at the time of this Homer matter?

A Yes.

Q Your effort was to put up a vigorous fight?

A Yes; we had quite a scrap there, and the evidence was there which I thought should justify the court in not appointing a local man on account of that local condition there, but he in his discretion didn't think so.

Q We are going to take up this local influence right now. Did you yield to the request of the local political boss in that county, in this

case, one Tom Ashford, who was the holder of one share of stock in the bank?

A Not I nor anyone in the department; in fact, I didn't know he was the political boss. I never met him before.

Q I understand he was a very influential man and the brains of the bank?

A Well, he might have been the brains of the bank—mighty poor brains if he was.

Q How do you mean, mighty poor brain?

A I mean this—he perhaps was the victim of circumstances, but the evidence in my mind showed that he used mighty poor judgment, perhaps induced by the fact that he had such a personal interest in these many persons who were his tenants.

Q You mean there was evidence of bad banking by him?

A Considerable bad banking.

Q Of what kind?

A The loans to tenants in which he was personally interested; they couldn't collect it.

Q Well, a brother, John Ashford, whom I just mentioned here—John Ashford was his brother, not being an officer or stockholder in the bank, but he was the big borrower, owed over $20,000.00 as endorser and $5200.00 as maker, and $5200.00 was the legal limit under the loan provision.

A I fought him as hard as I could.

Q Here is an interesting thing: John Ashford was an officer of the bank of Winnebago, one you mentioned also as having a local receiver. I haven't investigated Winnebago but I presume this is that old family case: naturally he didn't have any loans but the brother at Homer was borrowing from his bank at Winnebago; is that true, do you know?

A I don't know but I think there is something like that. That would be a good bank to investigate.

Q Just from your own feeling and conviction and your own experience, did you request the Attorney General to carry this case up to the Supreme Court?

A No, I didn't, because I didn't think that it could be upset; the court used his discretion in that matter, and if there is evidence to show that the man is qualified and furnishes the necessary bond, regardless of who gets the premium, he is appointed and it would stand.

Q What the committee would like to know, Mr. Radke, is whether you did not appeal from this appointment of the local receiver in this case due to local influence upon you or orders to you from the Superintendent of Banks or the Governor?

A I was not influenced in any way. I didn't know—you state that the Ashfords were a political power in that county; that was un-

known to me, if that is true; and there was no influence of any kind exerted on me, no suggestion by anyone, either in the banking department or outside of it, not to appeal the case, and as far as the Attorney General of the State doing it, my opinion of the matter is that it was useless to appeal, that it couldn't be reversed, and that there were so many of the creditors who wanted not only the local man but this particular man, let them have what they want and get some experience.

Q Now, have you ever received or do you know whether the department has received complaints that this receivership of the Security State Bank of Homer carried on a banking business, cashing checks and so forth, with a resulting injury to the going bank in that town?

A Never heard of it.

Q We also have a complaint that the receivership did other things to embarrass the going bank, such as demanding cash for checks of larger amount than the amount of cash permitted outside of the time lock vaults under the present burglary insurance policies: to restate that, you know a country bank can get a low insurance rate on burglary insurance if they have a small amount of cash in the bank.

A In the vaults there?

Q Well, that is outside of the vaults—the rest is kept under time lock, I think, until four o'clock in the afternoon; then the vault is opened and larger checks are taken care of. Well, this receivership sent over a $500.00 check, which was more cash than this small bank was allowed to carry outside of its vault under the burglary insurance it had, and demanded payment of that check; the banker didn't have that much cash but he said, bring it around about four o'clock when the time vault is opened and we will cash your check for you. Instead of that, the complaint is that this receiver or employee of the receivership called the farmer on the phone that had given the $500.00 check, and he said that the going bank had refused to cash his check, thus embarrassing him because it was a party line and all the neighbors heard it, and everything else—and we heard evidence of that from several complainants in that district: then they would write drafts—a person would bring a $1500 Government check in there and they would give him a check for $100.00 and keep $1400.00 there, probably for safe keeping, according to the complaint, and then they would write drafts on a city bank, which is, I guess, a part of the business of a small town bank, and sell them or give them to the people in that town which also took away profits from the going bank, all of these things aggravating the going bank and making it lose confidence, and sort of destroying confidence—anyway, embarrassing it considerably: have you ever had evidence that the local receiver did those things?

A No; this is the first time I ever heard it—didn't know that happened, and if it did happen the going bank—(interrupted).

Q Let me make clear that the party who took the Government check for $1500.00 over to the failed bank and left, oh say $1400.00 of it there, didn't owe that bank anything, so it must have been left there, probably a deposit—I don't know that—I just wondered if they might be thinking of Section 8-189, giving them the right to do a banking business, but at any rate, it shows the evil, doesn't it, of what might happen in the case of a local receiver without supervision of the Banking Department?

A Well, I didn't know that took place, but there is room for evil there, especially where you have a man who is interested in the failed bank and you have another going bank in that community; no doubt, the competition existing before the bank was placed in receivership created a lot of bad blood, and he saw an opportunity to take it out on him and punish him, and perhaps that happened—I don't know anything about that—I don't remember it, at least.

Q We also got this complaint—that complaint was made to the Going Bank Department that this receivership was doing a banking business, and nothing was done until Mr. Saunders came into the office, and then they got cooperation from Mr. Saunders?

A I don't know—that receiver is subject to the court's order, and I would suggest—(interrupted).

Q Evidence of a receivership or anybody doing a banking business in a town, like that, that would be your province to correct that, regardless.

A Oh, going banks should take some action on that, yes, if there is evidence of that.

Q I will ask you if in the case of the South Omaha State Bank you received any evidence that the officers of that bank received deposits knowing that the bank was insolvent?

A I don't recall. I believe that bank was audited by Mr. Basler; our suit against the officers and the bonding companies that bonded them is being conducted by Mr. Winters there and he has full charge of the case. I helped him draw the petition, but it is quite a while ago; I don't recall any such evidence.

Q There was another report made, oh, I think in 1928, according to the testimony in the South Omaha case, where that South Omaha bank tried to nationalize and they were unable to do so because of their condition: do you remember any such report?

A I never saw it: you see, I didn't become attached to the receivership work until July 31, 1931; that is long before my time, and I don't know anything about that.

Q Well, July, 1931, was before the receivership, August 14, 1931?

A Just previous to it. I think the State bank of Omaha and the

South Omaha State Bank were perhaps the first two put in receivership after I came here.

Q You wouldn't imply that that meant you would exert any less diligence with respect to this South Omaha State Bank?

A Not at all.

Q It came under your jurisdiction?

A Yes. Any matters of a criminal nature were called to the County Attorney's attention, and there were criminal prosecutions, especially against McGurk—I don't recall others—I think perhaps those prosecutions failed.

Q I call your attention to the decree of Judge Hastings in the Dingwell guardianship matter where he held that John S. McGurk should not be credited with the deposit of funds of the said incompetent made by McGurk in the South Omaha State Bank on July 31, 1931, and that in making such deposits the said McGurk did not exercise due care and prudence in disposing of said funds, and I ask you why John S. McGurk should not be held liable for accepting other deposits with full knowledge of the financial condition of the South Omaha State Bank, if Judge Hastings would hold him liable for accepting these deposits with knowledge of the bad condition of the bank? Have you seen that decree?

A I think I have. At least, I had Mr. Southard draw it up after we came to an agreement to settle that litigation. We made a very fine settlement there, and I think the bonding company later sued McGurk for the loss, that is, the bonding company that bonded him as guardian there.

Q Yes—the bonding company paid the loss to the successor guardian which is the Omaha National Bank.

A And the court approved that settlement. I think it was a very fine settlement.

Q As a matter of fact, the examination of July 7, 1931, showed clearly that the bank was insolvent, did it not?

A I never saw that examination.

Q Do you ever ask for those examinations in a case of this kind?

A No; I didn't need it in there.

Q What brings to your attention the first notice of any irregularity of an insolvent bank? Don't you have a right to ask for records in any bank once it is given to you?

A Yes, only the auditor makes a report on their excess loans that we might be able to recover, and on preferences, particular preferences, and directors liability—we get that from the auditor who makes the audit.

Q Did you ever institute proceedings against any bank officer for taking deposits knowing that the bank was insolvent?

A No, that would be a criminal action.

Q And, according to your previous testimony that would be a matter for the receiver and not for you?

A Yes; I am interested in trying the civil cases and getting as much money back into the fund as possible.

Q Have you any independent duty other than your orders from the receiver, in regard to reporting any evidence of criminal violations to the Attorney General or to a County Attorney?

A I don't know of any other than a general citizen has.

Q Would you like to have that authority?

A Well, I think that it would be useful if the attorney had—that is, the attorney for the receiver, had some authority along that line.

Q Who dictates what you can do?

A Primarily, the court, in judicial receiverships; next, the receiver.

Q Well, do you think you owe any duty to the court to investigate criminal matters?

A No, I don't think I do; that would necessarily take my time and part of the receivership's funds to make such investigation, and I don't think the Department of Banking should be loaded with any of that kind of expenditure in order to prosecute someone which brings no money back into the bank.

Q It does not cost the receiver anything to make a report to the County Attorney that there is some evidence of criminal violation here, does it?

A Oh, if he has it, if he gets it without special effort.

Q Supposing the depositors committee also requests that the report be made and submitted to the County Attorney?

A Well, it would be a good idea if he made the report.

Q But you have never done so?

A Personally I haven't.

Q Do you recommend that banks which are insolvent be allowed to remain open? There has been testimony, of course, that banks which were insolvent were allowed to remain open?

A Well, the statute says when they become insolvent they shall be closed by the department: however, there is a difference in insolvency: now, there is what some courts are pleased to term "simple insolvency" where the assets, perhaps, are sufficient to pay the liability, but its capital structure is impaired; then there is "hopeless insolvency" where the officers couldn't possibly have any reason at all to believe that they could get that bank back out of the red and make it a good sound financial institution, but simple insolvency implies that they have a reason to hope and expect that they could.

Q Well, how many of the cases of insolvency brought to your attention—what percentage were so called simple insolvency and what percentage hopeless insolvency?

A Well, I couldn't give you any percentage.

Q Do you know anything about the bank at Wisner?

A Well, personally, I think after we started liquidating and after the liquidation was about done, we could see that that bank at that time was really hopelessly insolvent although that may not have been known to the officers. That is another additional element that I should put in there.

Q What do you mean, not known to what officers?

A Of the bank.

Q Suppose they did know it—Nicholson admitted he thought it had been insolvent for a couple of years.

A Is Nicholson an officer? I didn't know that.

Q He was attorney for the bank for a couple of years before it closed?

A Well, that wouldn't make any liability on the officers' part if they didn't know, but if it could be shown that they knew the bank was insolvent and they took deposits knowing that fact, I would say a crime had been committed, and they could be convicted, and it would be the County Attorney's duty, in all probability, to proceed in an action against them.

Q If a bank is operated when it is insolvent, what protection is given new depositors? You understand what I mean by new depositors?

A Those who make deposits during the period of insolvency: is that what you mean?

Q Yes, who had no such deposits there previous?

A Well, the only thing I can state right at this time and I will give you an example of it, is this: when the bank closes they file their claim; they would file it on this basis, asking for preferential payment in full out of the assets of the bank prior to payments to other claimants, for the reason that when the bank received that deposit the officers knew that the bank was not only insolvent but hopelessly insolvent, and when that condition obtains, then the depositor will be entitled to a recission of the contract of deposit by reason of that fraud involved in the transaction practiced upon him by the bankers.

Q In other words you would make sure that new deposits were set up in a trust account?

A I wouldn't make sure of that at all. I would make them prove every bit of it if they didn't ask for a trust deposit—we call them trusts, misnamed—preferential payment. Of course, they are asserting that right; it is the receiver's duty to resist it and put them on strict proof in that case.

Q You would make it a matter of requiring a strict demand of the depositor whether he knew enough to ask for a trust account or just gave them his money in a hope the bank knew enough to take care of it?

A No, no.

Q You just stated that you would make him prove his right or waive it?

A Make him prove it, of course, if it is questioned at all, but if there is a clear case, he is entitled to absolute preferential payment and I would suggest to the court that it be allowed. I have done that.

Q You think, the Banking Department having examined that bank, it is a safe place for the ignorant depositor who comes in and makes his deposit, with a sign on the door that the bank is being protected by the Banking Department, and that he ought to be smart enough to ask for a preferential deposit?

A We are not talking about the same thing; you seem to be talking about a bank that is a going bank, being left to run.

Q Yes, a going bank, being left to run.

A Well, I am talking about procedure in receivership.

Q Well, of course, as to the claim, I didn't know where you were going to allow those claims, but I just think those deposits put in insolvent banks, is money over the dam—they are lost. Take Ragan, for instance, where the President of the bank was an officer of the school board and the school funds were down at Alma on deposit with the county where they were secured: Mr. Woods writes the President of the bank a letter on July 14, 1931, stating "your bank is insolvent under two statutory definitions;" if you are permitted to run I think it will be to the prejudice of new depositors, but if you want to take the chances of criminal prosecution if the bank fails, read the statute that provides the criminal penalty and go ahead and operate your bank. They operated it, brought the school funds up to that bank, and the bank closed. I think that was a wrong to those new depositors.

A To the school district, true, that is a fraud, basically a fraud, however,—(interrupted).

Q What protection have you got for those new depositors when you allow an insolvent bank to operate?

A In recovering their claim; if there are enough assets left they can recover in full under those conditions. However,—(interrupted).

Q The premise of our statement here is that there isn't enough assets —the bank is insolvent.

A We may be certain that the school district required the treasurer to furnish a bond that would fully protect the district; they would have a good cause of action on that bond for his negligence. Well, both the principals would be charged with knowing the condition of that bank, and if they could show that he knowingly deposited that money in an insolvent bank, even though the district designated that bank as the depository, they could recover against that bonding company. That is not the right protection, perhaps—the protection I have in mind; what I have in mind is when a bank shows signs of insolvency or approaches that line where we can see it is insol-

vent, that the department exercise its authority to take charge of it.

Q I think so, and protect the new depositors. I just can't see any reason.

A If you want my idea on that—immediately that the investigation shows that the capital structure is impaired and they are not making bona fide effort to repair it, it should be taken charge of by the department.

Q Did you so advise a receiver during all of your conduct in office?

A Oh, the receiver takes them after they are busted and done.

Q Well, did you so advise the Superintendent of Banks?

A I would if he asked me the question.

Q Did he ever ask you the question?

A I discussed that a couple of times with Mr. Woods, when he was Banking Commissioner. But then here lately, if you try to do such a thing, and even though you find the bank with the whole capital structure wiped out, and you go over there and take charge of it, you have the whole community against you, against the department, and they bring injunction actions against the department to prevent taking charge of that bank.

Q Where did that happen?

A Down here at Murdock, two of them at Edgar, one of them at Sutherland, and Calloway, and Clarks out here, and we appealed that to the Supreme Court to find out what the department's powers are. We are enjoined out there from taking over a busted bank that is absolutely insolvent in every respect of the word, but we have been enjoined—the department has been enjoined.

Q Why? Did the Supreme Court state so in its opinion?

A That is pending on appeal now; that is the Farmers State Bank of Clarks. I don't have the Bill of Exceptions in the case yet but hope to get it this week; then you can examine the Bill of Exceptions and find out what the facts are.

Q By the way, that Dingwell decree we talked about with the South Omaha State Bank is Exhibit 21 at South Omaha, and I think it has already been made a matter of record here. The decree in the Dingwell matter, we had better give that an Exhibit number here: that will be Exhibit 66. That Dingwell matter was the one where I read you what Judge Hastings decided in the Dingwell Guardanship, that McGurk made deposit of the guardian funds in the bank knowing that the bank was insolvent, therefore, the Court gave the successor guardian a judgment for about $55,000.00 against John S. McGurk, which the Glenn Falls Bonding Company paid.

A Of course, you understand that case was not tried, and that judgment of the Court was rendered pursuant to a stipulation to settle it, and I don't think McGurk was there defending on that, and we

really can't go that far right now as stating that is an absolute finding against McGurk. Mr. Southard had charge of getting the court orders and settling that matter, and I was not present but that is my view of just about what happened.

Q Well, there is the subpoena issued for August H. Basler, one of your auditors, isn't it?

A Yes.

Q He was there to state your side of it or the department's contention in the matter, wasn't he?

A I think there was a friendly proceeding there in the settlement involved.

Q The statements are in there—you don't think Judge Hastings would make such finding without some proof of it?

A Oh, I think there was some proof, but I don't think McGurk was there to tell anything about it.

Q Well, do you think his word would be any good about it?

A Well, I wouldn't rely upon it; I would discount it 100%. While his word may not be any good, they would credit it for what you could expect.

Q Do you think Judge Hastings would pay much attention to McGurk as a witness?

A Well, if he knew the facts I doubt if he would.

Q Did you dismiss a suit brought against two stockholders in the South Omaha State Bank, who had transferred their stock prior to the closing of the bank?

A Well, Mr. Nye had complete charge of those stockholder cases, and I can't tell you; he was my first assistant and his special work was stockholders and directors liability cases.

Q Well, do you know the reason for dismissing this action?

A If it was dismissed he no doubt had good reasons for doing it, that is, perhaps they were insolvent, and they might have been included in a general settlement; there was some sort of a settlement, I recall, but I can't give you any details; I don't know anything about that.

Q I call your attention to this paper, Exhibit 67, which is a petition and praecipe in the action of E. H. Luikart, Receiver, South Omaha State Bank, Omaha, Nebraska, plaintiff, against John S. McGurk, John Kresl, Clair E. Goddard, Frank L. Vlach, also known as F. L. Vlach, Joseph J. Pavlik, Frank M. Lepinski, Trustee, defendants; this petition is signed by E. H. Luikart, Receiver, South Omaha State Bank, Omaha, Nebraska, by Barlow Nye, F. C. Radke, O'Sullivan and Southard, his Attorneys. In paragraph V of the petition it states "that on or about the 9th day of March, 1928, the defendant Frank M. Lepinski, trustee, became the owner and holder of stock certificate No. 125 of the capital stock of said bank and

continued to be a stockholder in said South Omaha State Bank, Omaha, Nebraska, until a few months prior to the date of the appointment of the receiver as aforesaid; that the said Frank M. Lepinski, trustee, did at a time unknown to this plaintiff assign said stock certificate in blank and deliver the same to said bank, said defendant knowing full well at said time that said bank was insolvent and in a failing condition; that said assignment as aforesaid in blank was made for the purpose of evading and defeating the double liability of said defendant as a stockholder in said banking institution." Will you please examine this Exhibit 67 and state whether or not that paragraph appeared in your petition in the suit against Frank M. Lepinski as a stockholder?

A Paragraph V you refer to?

Q Yes.

A This seems to be the original petition filed and there is a paragraph V, and I am going to assume that you read it correctly, and if you did—(interrupted).

MR. WATSON: Well, enter it in as an Exhibit to be copied in full in the record, to make sure I did read it correctly.

A (continued) And if you did read it correctly it is in there.

Q Then I will ask you if this was the conclusion of Paragraph V and if you read that: "That the said Joseph J. Pavlik, defendant, became the owner and holder of stock certificate No. 122 on or about the 23rd day of January, 1928; that thereafter and on a date unknown to this plaintiff the said Joseph J. Pavlik, Defendant, did assign said stock certificate in blank and deliver the same to said bank; that said defendant did at the time of said assignment know full well of the failing and insolvent condition of said bank and that said transfer was made for the purpose of evading and defeating his said double liability as a stockholder." And then the paragraph closes with "That said assignments and pretended transfers, as aforesaid, and each of them, were made wholly without consideration and for the purpose of evading and defeating an action to collect the double liability of stockholders in event of receivership and for the purpose of defrauding the depositors and creditors of said bank." Now, please examine this Paragraph V carefully and check it back and have the reporter reread it to you, if you care to—you have my statement subject to the complete copy which will be an exhibit—and tell me whether or not that is a statement made by you in that case in the petition?

A I think you have read it correctly and that is one of the allegations in the petition.

Q Did you dismiss these actions against Frank M. Lepinski, trustee, and Joseph J. Pavlik?

A I don't recall. As I stated, I didn't personally have charge of the case, active charge. Mr. Barlow Nye did.

Q In these allegations you state that Frank M. Lepinski and Joseph J. Pavlik knew the bank was insolvent when they sold their stocks before the bank closed?

A That is there.

Q Don't you recall that you dismissed these suits because these two stockholders came to Lincoln with their attorneys and told you that you couldn't prove that they knew that the bank was insolvent, because if it was so you could not have lawfully permitted it to remain open for so long a time after they had disposed of their stock?

A No; they didn't tell me that.

Q That is what they testified to.

A They didn't tell me that because I never seen them.

Q Did the Receiver order you to dismiss those suits?

A Not as I know.

Q Have you examined your records to determine whether the Receiver ordered you to dismiss this suit?

A If you ask Mr. Nye, I think he can give you full details of that; I can't state.

Q I think it was Pavlik and Lepinski that stated at the South Omaha hearing that they told the Receivership Department, the man they had talked to down here, that since the Department of Banking was making periodical examinations they surely should have known the bank was insolvent and should have closed it according to law, and why should they be charged with knowing the bank was insolvent if the department had allowed the bank to run while it is insolvent?

A Well, that wouldn't excuse them.

Q Well, that is a good point to bring that out?

A They are charged with knowing what is going on there—were they directors? I don't know.

Q I think they both were.

A Well, a director, you know, is not a mere figurehead; he has got liabilities; he has got duties, and if you want to get a nice statement of just what directors' duties are, I would refer you to the case of State vs. Farmers State Bank of Wood River—anyway, State vs. the bank at Wood River where Lyhane was intervener. He was a director trying to recover back some of the property or money that was involved in a reorganization, and we defeated him both in the District Court and Supreme Court, and in the Supreme Court Judge Eberly, writing the opinion, made a fine statement of what the duties of a director in the banks are.

Q Now, you stated in the case of these stockholders' suits, Mr.

Barlow Nye took orders from Mr. E. H. Luikart, as Receiver: is that it?

A Oh, I presume so; he was put in charge of that litigation.

Q Who put him in charge of that litigation?

A I did, of course, with the consent of Mr. Luikart, the Receiver. I don't know whether he had a direct conference with Mr. Luikart on this particular case or not; I couldn't state; he kept a record of what he had done, what he had done in each case, and I think he kept a record of various conferences.

Q I have a record here—I don't know whether it includes the final disposition of that case or not?

A I believe all the stockholders' liability is settled, and it was a good thing to get it settled before the court spoke.

Q That was collected from these two men?

A That may be—I don't know. However, the case was prematurely brought, and it is a good thing it got settled then.

Q There is no record here: I wish you would obtain from your office a statement as to whether or not any judgment has been obtained against those two men.

A Who are these persons now?

Q Joseph J. Pavlik and Frank M. Lepinski, trustee.

A Both trustees or just the one?

Q No, just the one.

A Find out what has happened to the case as respects them?

Q Find out whether any judgment was obtained against those two men. Did you ever see the examination of July 7, 1931, of the South Omaha State Bank?

A Never did.

Q Why didn't you start a suit against the Robert Z. Drake Company and their affiliates on this excess loan that they had in the South Omaha State Bank?

A I don't recall that was ever called to my attention that there was a cause of action, although it may have been; I don't recall it.

Q Well, did you ever have that brought to your attention in anyway?

A All I know about the Robert Z. Drake matter—I think he is in bankruptcy and we have a lot of law suits on bonds furnished by, I believe—I want to make sure of that—The American Indemnity Company perhaps it is—but some bonding company—leave the name out—which were tried out in Red Willow County and the receiver was successful; there are eight cases and they are pending in the Supreme Court, were argued last spring, and no opinion has as yet come down; they involve many thousands of dollars; and some of those eight cases applied to this South Omaha State Bank and the others the State Bank of Omaha.

Q Why did you retain O'Sullivan and Southard as attorneys for the

South Omaha State Bank Receiver when they were heavily indebted to the bank?

A I didn't know they were heavily indebted, but they were retained because they are good lawyers.

Q Do you ever investigate as to whether or not the attorney that you appoint is indebted to the bank?

A I might sometimes; I believe I have—I don't know.

Q Does that make any difference to you?

A No, I don't think it necessarily makes a difference, although it may; it all depends on what the facts and circumstances are. If they were indebted to the bank, perhaps they were paying their indebtedness out of the fees they were earning, which is always good, I trust; you know many lawyers now days can't pay their debts; they are like the busted bankers.

Q Now, didn't that firm, after being retained by you, refuse to sue the step father of John S. McGurk, Mr. W. A. Wells of David City, for the Receiver?

A I don't believe there was a refusal but there was a suggestion that perhaps it would be better to have somebody else do it and the committee seemed to be of that opinion and O'Sullivan and Southard acquiesced in that, and that is about all I can tell you about that.

Q And you hired another attorney and prosecuted the case, did you?

A Yes, and they have been won.

Q How far did the case go?

A There are two of them and they are pending in the Supreme Court of the State of Nebraska, and one of them is in the proposed call which starts the session of November 4th, and I am proposing a motion that the other case be advanced and that both of them be argued together.

Q Now, you asked me to give you a chance to explain Exhibit No. 10?

A I believe we did have a conversation about that.

Q And I promised you that opportunity. On page 2 of that exhibit under the title "The Evidence" it reads: "In 1927, the Security State Bank of South Omaha became insolvent and passed into the control of the Nebraska State Guarantee Fund Commission for liquidation." Now, that is the first statement we have found to be contrary to the actual facts, but which you state is supported by the testimony of the case: is that what I understand you to state?

A What I want you to understand is that that brief or resume or statement of facts is based upon what appears in the Bill of Exceptions by oral and written documentary evidence.

Q Well, instead of that statement as it reads, probably it should read "in 1924 or 1925 the Security State Bank of South Omaha became insolvent and passed into the control of the Nebraska State Guarantee Fund Commission."

A That is possible and there may be a mistake in the person who has testified, that that is based on.

Q As a matter of fact you were not there at that time.

A I was not at the trial of that case nor was I with the department here when it was being dealt with back there, but what I am telling you is that brief is based upon the evidence produced at the trial and nothing else. Of course, if the evidence is erroneous we cannot help it.

Q Who presented that evidence?

A Mr. Winters tried the case, and I did the brief; Mr. Fleetwood did the work on the law.

Q And the witnesses were the witnesses furnished by the department? You know whose testimony you are quoting from.

A I could only tell you that by referring to the Bill of Exceptions, which gives who the witness was.

Q Now, I see a question down here as to Mr. Fleetwood: it states Mr. Williams would like to know why you paid him $10.00 to write an abstract on a piece of real estate where the bank had no equity in the real estate.

A Well, we sometimes didn't know—I think that is an assumption that is not justified anywhere; we don't examine abstracts ordinarily unless there is some equity in there and we want to find out what we have.

Q I don't have the details of which one.

A He didn't get fees unless he earned them.

Q Your answer is you wouldn't ask him to examine an abstract unless the bank did have some interest?

A If we knew it didn't have anything in it that would be useless, but abstracts are examined to find out the condition of the title and who owns and what the interest is; that is why abstracts are being examined.

Q Now, there are several other statements in here: you go into the matter of a "Dummy note" that was put up by the directors, and I don't have time to take that up now, but there is a more important statement here which you should be given a chance to explain. You state that "In 1929, McGurk was heavily in debt"—this is Page 4 of the brief—"he was nevertheless endeavoring to secure the entire control of the South Omaha State Bank and through negotiations lasting till December 31, 1929, did actually acquire the stock of Messrs. Pavlik, Kresl and Vlach. On that day the bank executed and delivered a deed, consideration, $1.00 for the Collins property to Daphne S. McGurk, the wife of John McGurk, who was now"—this is the important part—"the sole stock owner, manager, and presiding genius of the South Omaha State Bank". If one man is the only stockholder in the bank isn't that a violation of the law?

A What law?

Q The banking law?

A Which one of them?

Q The laws of the State of Nebraska.

A Well, could you be more precise in explaining?

Q You know the banking laws of this state.

A Well, I am fairly well acquainted with the banking laws of the state.

Q Well, is that a violation of the banking laws, if one man is the only stockholder in the bank?

A Well, that is hard to tell. This would be true, that he would not have a competent Board of Directors.

Q Oh, I didn't mean that: do the statutes provide that there should be a Board of Directors of not less than three nor more than fifteen, or in such terms as that?

A That is what I say, he would not have competent directors.

Q Don't the statutes require that there be a Board of at least three directors?

A Absolutely.

Q And each one has to own some stock, do they not?

A Absolutely.

Q How many shares of stock?

A The law has changed on this: at that time I would say it provided for four percent.

Q What do you say about that statement being a violation of the law: was this a violation of the law if there was only one stockholder in the South Omaha State Bank after December 31, 1929?

A Well, it would be a conclusion on my part to state it would be a violation of law, but I will put it this way—(interrupted).

Q I want your conclusion of the law: put it that way.

A You want my opinion, then I would say this, that he had not complied with the statute with respect to the ownership of stock, the necessary amount of stock to qualify him as a director.

Q And as long as there was only one stock owner it would be a continuing violation of law?

A You say a violation of law?

Q Yes.

A I will put it this way: he has not complied with the law.

Q Well, when a man does not comply with the law, hasn't he violated the law?

A Not necessarily, no.

Q I would like to have an explanation of that statement.

A It isn't necessarily a violation of the law.

Q Do you want to have this record show a man who has not complied with the law is not violating the law?

A Not necessarily. He may be violating it, but not necessarily so; he has got a good corporation, a banking corporation but—(interrupted).

Q We will have to page Mr. Webster here to find out the meaning of the word, but isn't a non-compliance a violation?

A Not necessarily; it may be and in all probability it is.

Q Well, I was rather surprised to see that statement in the brief.

A That is the evidence though in that case.

Q Do you know how long that violation continued?

A I do not.

Q Weren't you interested?

A Yes sir, because I wanted to win this law suit.

Q Did it last that way until the bank closed in August, 1931?

A I couldn't tell you but that appears in the evidence and the Bill of Exceptions shows it. I based that entirely on the Bill of Exceptions; the evidence shows that in there as it exists,—whether he later changed that, I don't know.

Q You say he later acquired the stock of Pavlik, Kresl and of Vlach: do you know what he paid for it?

A I don't know.

Q Do you know what he gave from the assets of the bank for that stock?

A I don't know.

Q He delivered assets of the bank to these three men, Pavlik, Kresl and Vlach in payment of their stock: did you know that? Did you find that when you examined that?

A I don't know if that is all covered in this particular case; I made no special examination to find out those facts. What we were interested in here was whether the bank owned the real estate involved in that case or whether McGurk owned it; we claimed and McGurk agreed with us that the bank owned it, and that brief is a concise and I believe clear statement of what the facts are, a resume.

Q But the point is, Mr. Radke, if you knew that McGurk was the only stockholder of this bank at that time and that was a violation of the law, and he remained the only stockholder or practically the only stockholder up to the time the bank closed in August, 1931, there might have been some ground for an action there, might not there, against those officers and directors?

A Oh, if the department had known those facts at the time that took place, and assuming that I was the head of that department, I would have taken charge of the bank at once.

Q You were the attorney for the Receiver though, when the bank closed?

A Oh yes.

Q And your relation with the department didn't commence until July 31st, however?

A Yes, and just previous to the closing of the bank. Of course, we know facts now, I presume, that the department didn't know, and he may have stockholders qualify immediately afterwards, when he became the single stockholder.

Q Now, in this particular case you got your statements from the Bill of Exceptions, from the record of the testimony given at the trial?

A That is exactly where it was gotten.

Q And the testimony given at the trial with reference to the activities of the bank in this case was probably given by Department of Banking employees, wasn't it?

A I think Mr. Basler was one of the auditors who testified there.

Q You think Mr. Basler made a mistake in that testimony?

A I am not thinking about it, whether he made a mistake or not; the only thing I am attempting to tell you is that that resume of the facts is what the Bill of Exceptions shows; now, whether those who testified were right or wrong, I don't know; I was not present when the case was tried. Is there any question in your mind but that there was a banking corporation when he became the sole owner?

Q Well, it has always interested me how there could be a receivership of the Security State Bank and a going bank of the Security State Bank on only one charter which continued from September 7, 1926, down to the close of the South Omaha State Bank on August 13, 1931.

A Of course, I don't know the details of those facts and just how that did take place, but the way it looks, there was a reorganization and some of the creditors, perhaps, wrote down claims.

Q Did you ever investigate the facts of it?

A No.

Q Then you don't know just what happened?

A No.

Q In fact, the name Security State Bank was changed to South Omaha State Bank?

A That may be but if there was a mere amendment, it wouldn't change the bank.

Q That is my contention.

A Because, you refer to the bank down there at Florence—there is a case, and the most recent case is First Trust Company vs. Exchange Bank out here in Buffalo County, that states that reorganization and recapitalization, issuance of new stock, acquiring of new stockholders, does not make a new corporation if they continue to operate under the same articles of incorporation and the same charter.

Q Well, apparently they did use the same Articles—just the change of corporate name, although there was a receivership operating at the same time?

A There may be a contract with the creditors—(interrupted).

Q Well, there was not any contract with the creditors in this case.

A Well, I don't know.

At this time an adjournment was taken until 2:00 o'clock P. M. of the same day, October 21, 1935.

2:00 P. M. October 21, 1935, the committee convened pursuant to adjournment, same parties present as before, and the following proceedings were had:

F. C. RADKE

recalled for further examination testified as follows:

BY MR. WATSON:

Q What happened about that Ogallala bank guarantee?

A Generally this is what happened, without attempting to give the details: a local man offered to purchase the assets of the bank for a sum sufficient to pay all creditors in full. The offer was formulated into a stipulation and the matter was submitted to the District Court of that county where Ogallala is located, and after giving notice to all persons interested in the bank, a hearing was had and the District Court approved the sale as proposed by the purchaser. Sale was had and the man purchased the assets, and every creditor was paid out in full, so that he became the owner of the assets and is liquidating them himself, and the Receivership accordingly was closed, the corporation dissolved and everything wound up.

Q In that case the assets were sold for the amount of the liabilities?

A Yes.

Q Was the bank insolvent then?

A It was.

Q Were the assets worth the sale price?

A That is something that I can't say. The assets were badly frozen, which we might state, so that the bank could not operate as a safe institution, and the purchaser was willing to pay this price regardless of their value, he speculating on them with the fact in mind that he might have some loss; and the stockholders were all agreed to this, because that would relieve them from any possible stockholders liability. The creditors filed their claims, claims were allowed, and they then, upon payment of the full amount of their respective claims, transferred their claims to the purchaser of the assets so that when everything was done there was one creditor who owned all of the assets by reason of the purchase of the claims, and then the purchase of the assets. This purchaser was not a creditor of the bank, as I recall it, in the first instance,

when the bank was closed yet he might have had some little claim there.

MR. WATSON: Did you have a question, Mr. Pansing?

MR. PANSING: Well, you might answer it, if you care to: I think you are a little bit mistaken about that bank.

MR. RADKE: That is possible; I am just stating generally what I recall of it.

MR. PANSING: There were two stockholders that owned practically all the stock outside of a few shares.

MR. RADKE: That may be.

MR. PANSING: And the trustee bought the assets for his client for whom he was trustee, Mrs. Welpton and her daughter bought the assets merely to avoid any possible future litigation upon a stockholders liability; that is the only reason.

MR. C. G. STOLL: This was the Farmers State Bank of Ogallala.

MR. WATSON: I didn't know there were two banks in Ogallala. Which bank was it, Mr. Radke?

MR. RADKE: I don't know the name.

MR. C. G. STOLL: The Farmers State Bank.

MR. RADKE: You have heard my recitation of the facts: is it correct as you remember it, Mr. Stoll?

MR. C. G. STOLL: Yes, sir.

MR. WATSON: The one you refer to is what bank?

MR. RADKE: The last bank closed out.

MR. WATSON: And the one you referred to, Mr. Pansing, was what?

MR. PANSING: The Exchange Bank of Ogallala.

MR. WATSON: Do you know anything about the trusteeship of that Exchange Bank?

MR. RADKE: No.

MR. WATSON: Do you know the matter that Mr. Pansing refers to, Mr. Stoll?

MR. STOLL: Without going back on the record, I couldn't.

MR. WATSON: Could you look that up and give us that case later on in your testimony and tell us what happened there?

MR. STOLL: I will see if I can find the record of it.

MR. RADKE: You asked me something about a violation of law, you know.

MR. WATSON: I mentioned a little while ago about the firms of attorneys employed for the Receiver. I asked you the question of whether or not you criticized your local attorneys for filing actions beneficial to the Receivership, if they did do so without your express authority.

MR. RADKE: When I employed attorneys?

MR. WATSON: Do you want an example of that?

MR. RADKE: Well, I presume there is only one example in existence that I know of. When I employ attorneys they are instructed that they are operating subject to the control of the Receiver and my own instructions as authorized by the Receiver, and that the only way to keep the work systematic is to be controlled by the Receiver.

Q You know of the attachment filed against Hugo Leisy of the Wisner State Bank?

A Yes; I have heard of it. I think that action was instituted by Mr. Oleson without the knowledge and consent of the Receiver. I think that is one.

Q Assume it was instituted with the knowledge and consent—(interrupted).

A And without the consent also of the local assistant and the depositors committee.

Q That is just the point I want to bring out: assuming it was without the express consent of your office and of the local assistant Receiver, but that the attachment was for the benefit of the interests of the creditors of that Receivership, would you criticize your attorney in that case?

A I might criticize him for not conducting a matter the way he was instructed to do it, so it would not be repeated.

Q In the case of the attachment of the Hugo Leisy real estate, in your opinion was not that for the benefit of the Wisner State Bank creditors?

A I don't know whether it was or not. This existed preliminary, that there were negotiations for a settlement without suit, which if accomplished, would have been much more beneficial than to start an action, and I think the outcome of the whole business was that there was a settlement.

Q What do you think of the action of Mr. Hugo Leisy in sending deeds and mortgages out here to this state, which were filed too late after Mr. Oleson had filed his attachment: don't you think that more or less justified Mr. Oleson's attachment?

A That may be; there might have been an emergency there which would have been of some benefit, and if that was true, convinced of the fact, of course, we would approve the action.

Q As a matter of fact, Mr. Stoll testified that he wrote a memorandum to you in which he stated that he thought the property of Hugo A. Leisy should be attached?

A That may be; I don't recall it, and of course, the attachment couldn't have been successful, based on the stockholders liability, because the action was prematurely brought and couldn't have been sustained.

Q Did you think there was any directors liability in that case?

A I don't recall.

Q Did you make any investigation to see?

A I didn't personally make it. I had Mr. Nye, as I told you, assigned to this particular kind of cases and he has full information on that and would be the proper party to give the testimony.

Q Didn't he make a report to you?

A We might have talked it over somewhat, but I didn't, as I say, have the details of it, and he had full charge.

Q As a matter of fact, you know there was ground for directors liability at least in that case, don't you?

A After the bank was liquidated I am convinced there would be a deficit, but you know that kind of an action is prematurely brought if it is brought before the bank is liquidated.

Q Against the directors?

A Oh, directors—I thought you said stockholders.

Q No—I said against the directors. What is your practice with regard to stockholders liability, as to when you could bring them?

A Previous to 1930, the election in 1930, the constitution provided that an action could not be brought until the bank was liquidated; then in 1930 an amendment to the constitution was voted on and adopted, which provided an action could be brought immediately upon the appointment of a Receiver. We instituted several actions promptly, but immediately the question arose that such action was prematurely brought for the reason that stockholders liability is a contractual liability, that the contract was entered into when the stock was purchased and issued to the person holding it, and that accelerated remedy as provided by that constitutional amendment would be in derogation of the contract so that it would have the effect of violating the Federal Constitution which guarantees the obligation of contract.

Q There can't be any changes then? What are you going to do? Have you got the interpretation of the Supreme Court?

A From the Supreme Court, and the Supreme Court said that the stockholders contentions were correct, and that left us with many cases—(interrupted).

Q What was the date of that decree?

A I don't recall it, about 1933, sometime early in 1933, I believe it was. Personally I didn't agree with the Supreme Court on that.

Q What is your contention?

A I don't think the reasoning is good.

Q What is your contention?

A My contention is this, that the change merely goes to the remedy, that it does not deprive the stockholder of all of his remedy there and even though it may make it somewhat burdensome yet it is not in contravention of the Federal Constitution.

Some states have so held, and West Virginia just recently did. Therefore, I instituted another action and this is in the Supreme Court right now and has been briefed by us, by both sides—the stockholders' brief was filed just last week, I think.

Q This Wisner State Bank failed September 16, 1931—that is, the Receiver was appointed then, or they closed their doors at that time: what was the law then on bringing a suit on stockholders liability?

A It could not be brought, although there was a constitutional amendment suggesting that it could be, but the law—you asked me what the law was.

Q Well, the Supreme Court had decided differently?

A Yes.

Q According to the legislature and according to your own argument?

A Yes.

Q Now, there was another contention made by Mr. Andrew R. Oleson, the first attorney for the Receiver at the Wisner State Bank: he maintained that the $3500.00 that Hugo M. Nicholson, the former attorney of the going bank, had taken out of the telephone company's account and applied on his personal note on September 10—you know September 14th was Saturday—was an unlawful preference, and he made that contention in a letter to your office in the month of February, 1932. It was soon after that that he filed this attachment, and he was criticized by your office and his services with the receivership ended. Thereupon you appointed Mr. Nicholson's law partner, Otto Zacek, who had been the partner of Nicholson all the time he had been Attorney for the going bank, as attorney of that Receivership: hasn't it been your experience that when you appoint—well, how many times do you do that?

A Do what?

Q How many times do you appoint the same firm of attorneys as attorneys for the receivership who were attorneys for the going bank that failed?

A That very seldom happens, although sometimes it does

Q Were you ordered to do that?

A No.

Q Or was that your own idea?

A I selected him. I selected Andrew Oleson, and do you want to know why he was dismissed?

Q You selected Andrew Oleson?

A Of course, it was approved—(interrupted).

Q Wait a minute: you say you selected Andrew Oleson of your own selection?

A I think you will find a letter there instructing him.

Q Didn't anybody tell you to select Andrew Oleson?

A I don't recall of anybody telling me to select him.

Q Didn't Governor Bryan refer Andrew Oleson's letter to Mr. Luikart and request that Andrew R. Oleson be appointed?

A I don't know. I selected Mr. Oleson and it might have been on such instruction and it might not have been. Usually I selected those attorneys—at least, that authority has been delegated to me, and if he was suggested—(interrupted).

Q I read you from Exhibit No. 8 in the report of the hearing on the Wisner State Bank, being a letter of November 19, 1931, from Luikart to Oleson—

MR. WATSON: I would like to have this included as an Exhibit in this hearing and it is identified as Exhibit 68. It is on the stationery of the Department of Trade and Commerce, E. H. Luikart, Secretary—Bureau of Banking, Bureau of Insurance, Bureau of Securities, Bureau of Fire Prevention, Bureau of Receivership—State of Nebraska, Charles W. Bryan, Governor—Lincoln—November 19, 1931. "Mr. A. R. Oleson, Attorney at law, Wisner, Nebraska. My dear Mr. Oleson: Governor Bryan transmitted to me your letter to him of the 17th and asked me to thank you very kindly for the interest you are showing in the matter mentioned therein. It is very evident that the officers and directors of this bank may be transferring their property with the intent of attempting to evade their responsibility for double liability on stock. More than likely these transfers will have to be undone by court action. The Governor asked me to inquire of you if you would be in a position to handle the legal matters that will have to do with the receivership in this bank, and also secure the restitution of this property so it can be held for any liability that may be due from the transferees to the depositors of the bank. Heretofore, the Governor has mentioned that we should use your services in legal business in your territory but because of the difficulties we have been having with receiverships transferred from Clarence G. Bliss to myself, which is now practically settled, we have not heretofore been in a position to do much in the selection of the attorneys that will be required. Please advise me if this business will interest you. Yours very truly, E. H. Luikart, Secretary. EHL:MK."

Q (continued) It appears from that letter of Mr. Luikart's that Mr. Bryan is the one who selected Mr. Oleson.

A That may be; he was the head of the department.

Q Well, what did you mean by your statement that you selected Mr. Oleson?

A That with all the attorneys the final action was with me to enter into the proper contract with the attorneys, and we worked out a schedule of fees, and they would operate under that schedule of

fees and agree that I should be the final one to pass on the fee.

Q But do you still maintain that you selected Mr. Oleson in view of the writing of that letter? That was a statement that you very emphatically made, that you selected Mr. Oleson, a few minutes ago—do you still maintain you selected Mr. Oleson?

A Well, if you want to get down to the definition of selection—(interrupted).

Q Well, what is your answer to the question?

A My answer is this: I selected, if we may conclude that the final arrangement or contract with him, that states the contract of service, which was conducted by myself, if that is the selection, I selected him; if that isn't, then somebody else selected him.

Q Were you furnished with a list of attorneys that you could hire by the Governor? Did the Governor furnish you such a list?

A I don't know that the Governor did. I think Mr. Luikart, a long time ago, had some sort of a list of attorneys.

Q That controlled you in your choice of attorneys?

A No, because there were only a few on that list, and there were many, many other attorneys that were not mentioned in any way.

Q Wherever it was possible for you to do so, was it your policy to select your attorneys from that preferred list?

A Yes, if they were—if they had nothing to interfere with them to do the work and were in all things competent to handle the work. It is highly technical work, you know, that the average attorney out in the country has a lot of difficulty with.

Q Will you furnish the committee with a list of fees paid by the different receiverships to their attorneys? Can you do that?

A Well, I think that the auditor could perhaps make up a list. I couldn't.

Q Do you consider that the provision of the law, Section 8-1124, Compiled Statutes, Supplement, of Nebraska, 1933, which provides that the fees or salary of attorneys or firms of attorneys shall not exceed the sum of $3500.00 per annum—do you hold that that does not apply to fees paid to other attorneys besides yourself and Mr. Nye?

A Well, I will give you my opinion on that whole situation: in my opinion that does not apply to local attorneys nor to myself, as applied to judicial receiverships, and not even to myself as the attorney for the department as receiver; that applies to a general attorney for the Department of Banking.

Q Now, we will just read this section again: "The Superintendent of Banks may employ such deputies, attorneys, examiners, and other assistants as he may need to discharge in a proper manner the duties imposed upon him by law. Provided, however, that such deputies, examiners, or assistants shall not receive as salary or compensation an amount in excess of $2400.00 per annum, and that

the fees or salary of such attorneys, or firms of attorneys shall not exceed the sum of $3500.00 per annum:" Now, do you state in your opinion that that is not a limitation on your office in its demand of attorneys' fees or recommendation, except in the one case of the attorney for the Superintendent of Banks in the Going Bank Department: is that the way it is?

A It is no limitation on the local counsel.

Q In other words, under your opinion, he could pay you $3500.00 a year for being attorney for the Superintendent of Banks, Mr. Saunders?

A In charge of Going banks, absolutely.

Q And in addition to that, Mr. Luikart could pay you a salary to be an attorney or general counsel for all of his judicial receiverships?

A That is true.

Q And in addition to that you could pay any amount you wanted to, either below or above $3500.00 per year to any attorney or firm of attorneys out in this State?

A To carry on specific litigation.

Q Well, is that your interpretation exactly?

A It is pretty close to it.

Q Well, I don't know whether the interpretation is right or not; I would interpret it that way.

Q Well, state your interpretation: I want to get what you mean.

A That provision there refers to counsel for general purposes in the department of banking.

Q For the Department of Banking alone as distinguished from the Receivership Division?

A Yes; then you will find another provision in there which authorizes them to employ counsel and experts of various kinds as assistants.

Q Isn't that Section 8-194?

A I think it is.

Q Didn't we discuss that this morning, that Section 8-194 (b) was an amendment to the statute 8-194 (a)?

A We discussed it.

Q And you told me an amendment always repealed the original statute?

A It certainly does.

Q There is no mention of counsel in Section 8-194 (b), is there?

A Of course not; it was not intended to cover that; it don't amend the 1933 act which stands there as 8-194 (a).

Q They are both amendments of the same Act, aren't they?

A Yes, and they do not conflict.

Q And the Act stood already amended by Section 8-194 (a) when Section 8-194 (b) went into effect?

A I don't know that—let's get that date exact.

Q Did you ask for an opinion from the Attorney General as to whether you could pay more than $3500.00 attorneys' fees in this matter?

A I think at one time I orally discussed the matter with Paul Good and he was of the opinion that we could.

Q Did you get that in a written opinion?

A No.

Q He stated that you were right?

A As a departmental attorney that is a limitation, but that limitation has no effect on acting as attorney for the judicial receiver, because the legislature has no control over that.

Q As a matter of fact then, outside of Section 8-194 (a), there is no provision in the law providing for a counsel for the receivership provision?

A There are two provisions there on counsel, 8-1124 and 8-194 (a).

Q You stated 8-1124 does not apply to the receivership?

A I said to the department.

Q Of banking?

A Yes.

Q In its supervision of receiverships as far as the administration of receiverships generally?

A Generally, and that could be contradicted; I don't know whether the interpretation would be correct or not, that the $3500.00 would be a limitation on the general counsel—you would say a general supervision of the statutory receiverships—that may be correct and may not.

Q Well, did you receive any salary—that is my point—did you receive any salary from the division of judicial receiverships, or administrative receiverships or any private way, in excess of $3500.00 per year?

A No, not after that became effective.

Q That was part of the law that went into effect May 9, 1933?

A Yes.

Q And you didn't receive in excess of $3500.00 per year at any time since then?

A No, sir.

Q Now, you may have heard Mr. Luikart state on the stand he thought that law 8-1124 didn't apply to his employees in the Receivership Department; we read a lot of their salaries and he said that limitation does not apply to them?

A I don't think it does.

Q Did you ever give him an opinion on that?

A Yes; we discussed it often, but I don't think I ever gave any written opinion.

Q What was your advice to him?

A I would advise him that it didn't apply; that section 8-194 would control it; that particularly applies to the Department of Banking having charge of going banks.

Q Didn't Mr. Luikart hold his job or position as Receiver in judicial receiverships merely due to his appointment as Superintendent of Banks?

A That was the conclusion that every one at first reached but after the Supreme Court spoke in the Minatare case it was shown that that was erroneous.

Q You think I could go down here to the District Court and if the Judge thought I would be a better Receiver he would have a right to appoint me in place of Mr. Luikart?

A I don't know.

Q Has the Judge unlimited discretion?

A Absolutely he has.

Q Doesn't he even look to the Superintendent of Banks before he tries to appoint a receiver? Doesn't he pay any attention to that?

A He pays some attention to it, yes, but it is within his discretion.

Q It is probably not a mandatory statute but it is a directory statute?

A Well, let me tell you something as to that: Mr. Luikart was appointed a receiver before he was the Secretary of the Department of Trade and Commerce.

Q Well, when was that?

A Preceding July 8, 1931.

Q What date did he go in as head of the Banking Department?

A He became the Secretary of the Department of Trade and Commerce July 8, 1931.

Q Well, did you ever ask for the opinion of the Attorney General as to this $2400.00 limitation?

A No.

Q You think that was the interpretation of the legislative intent in that statute?

A I think so, because there was an attempt to amend that section 8-194 to provide that same thing.

Q Well, what do you think the legislature intended by Section 8-1124?

A Its intent was what it enacted, and I think it was dealing entirely with the Department of Banking.

Q Well now, what did the court order, say, with regard to whether Mr. Luikart was applying to be receiver as Secretary of the Department of Trade and Commerce or Secretary of Banking?

A I think it more often, invariably referred to the descriptive personae as either deputy or as the secretary, and never as Superintendent of Banks, because I think there were no judicial appointments after that became effective.

Q But that was the reason given for his appointment?

A No; I think the main reason was that he was well qualified, but that was mentioned and that is the only way that the centralized receivership administration could be carried out; I think that was all considered by the court.

Q Isn't it true that the Banking Department tried to get this bill changed at the end of the legislative session of 1933?

A I think that is true.

Q And you couldn't get it through?

A I think that is exactly what happened.

Q Didn't you try to get the salary amendment knocked out entirely?

A No; I think there was an amendment to raise them because it would be very difficult to keep men like—(interrupted)

Q How about House Roll 674?

A There was a House Roll.

Q That was proposed by your Banking Department, to change this law, and it was not passed?

A Exactly—no, it was passed but not in the form submitted.

Q It was passed?

A Yes, but not in the form as submitted. That is my recollection of it.

Q You produced a bill to knock this clear out and to satisfy you they amended this bill giving you two deputies instead of one; that is what they put in your bill, isn't it?

A I think there was something in there in regard to deputies.

Q Well, now, you knew what the legislative intent was and you produced a bill to try to change it?

A Well, there was something in there—you couldn't keep a man like George Woods on that salary, and the fact of the matter is we didn't keep him very long either.

Q Didn't you get this new bill passed in 1933 to take all of Woods' power away from him?

A No, that wasn't the purpose of it; the purpose was to centralize the power in the Banking Department instead of having divided power.

Q Didn't you abolish the office of State Banking Commissioner?

A Absolutely, because there was divided power there which was not good, in my opinion.

Q Now, do you approve all vouchers for legal fees?

A I do; I usually approve the fee, cut it or in some instances I have raised it—usually it is cut or approved as it comes in, if it appears to be reasonable and fair, and then I make a requisition for the check.

Q Who got that power that was taken away from Mr. Woods as Bank Commissioner?

A The Superintendent of Banks.

Q Who was that?

A Ben Saunders now.

Q Who was it then?

A There wasn't a Superintendent of Banks until after the Act was enacted and became effective and appointment was made, and that was Luikart.

Q Luikart?

A Yes; that power was all formerly in two heads, the Secretary of the Department who had supervision also of Insurance, Blue Sky and I don't know what else, as well as the banking, and the Banking Commissioner who had charge of going banks.

Q Well, Mr. Woods was a very efficient administrator?

A Yes; I think he did very well.

Q Well, what was the reason for abolishing that job of Banking Commissioner?

A So as to centralize the power into one head instead of having two and as you know, Mr. Woods was kept on as Deputy Superintendent after the Act went into effect. There was nothing personal in that Act.

Q Didn't the law that was passed in 1933 centralize all the power in the Governor?

A No.

Q You are subject to removal by the Governor, are you not?

A No.

Q You are not?

A No.

Q Are you subject to removal by the Superintendent of Banks?

A I doubt it. I seriously doubt it—now, that was attempted—that was attempted in the Insurance Department, but the District Court held that the Governor and the head of the Insurance Department had no such authority, that the attorney when he was selected, became the officer of the court, and the court would determine whether or not he should be kept on. Do you want the citation to the case?

Q Just a minute: what about this in this provision in Section 8-194 (a), and which you say is the authority for your holding office—it says "The Superintendent of Banks may discharge such special deputies, assistants or counsel at any time or may assign them to one or more liquidations or transfer them from one liquidation to another."

A Now, that very thing was was attempted in the Insurance Department, as I say, in the liquidation of an insurance company, and the attorney was employed and then discharged, and he brought an action in the District Court of Lancaster County to reinstate him

and the court reinstated him, and the Insurance Department took it to the Supreme Court and the Supreme Court affirmed it.

Q In that case it was a judicial receiver, was it not?

A Well, the statute says that the Department of Insurance shall be the receiver, and that is it.

Q What about your position as counsel for the Superintendent of Banks? Can't he discharge you from it?

A I think he could if I were the attorney for the department generally, and this is true, if he asked me to resign or severely criticized me as not doing my work properly in connection with the liquidation of banks, I certainly would have the decency to get out.

Q Now, don't take me too seriously; there is no personal reflection of any kind intended—what I wanted to know, though, is whether you are like an ordinary appointee who is subject to removal by his superior? You know there is an old story in Washington when they used to appoint members to commissions they would get them to sign their resignation before they took their oath of office so they would be subject to removal. Now, what I want to bring out is whether you were subject to discharge by the Superintendent of Banks?

A As previously stated here there is some doubt on it; personally I would consider that this way; where I was the attorney for the Superintendent of Banks, operating exclusively understand,—I say "Superintendent of Banks"—"Department of Banking" operating exclusively and not as the Receiver under statutory receiverships, I would consider it to mean that he had that power to discharge.

Q Does the court in each instance approve your appointment as receiver?

A No.

Q In the order appointing Mr. Luikart receiver—I think there is one in evidence in this hearing—of a judicial receivership such as the South Omaha State Bank—we will make this appointment a matter of record, the order appointing the receiver August 29, 1931, identified as Exhibit 69—this order states as follows: "It is therefore ordered, adjudged and decreed that said South Omaha State Bank, Omaha, Nebraska, is insolvent; that E. H. Luikart as Secretary of the Department of Trade and Commerce be, and he hereby is, appointed Receiver of said bank by virtue of his said office": Now, do those last words "By virtue of his said office" mean anything to you in this order?

A Not now—it did then.

Q Why not?

A Because that is entirely ineffective; the Supreme Court's mandate says so.

Q Has the Court got the right to say that under a directory statute—that isn't mandatory; the Supreme Court has said it isn't manda-

tory—the court can do something else, but if the court appoints him Receiver by virtue of his said office, the court establishes his right to it to be by virtue of that office.

A He may select him by virtue of that office but E. H. Luikart is Receiver and the Supreme Court says that and we must abide by it.

Q But the court says that he is that by virtue of his office, and the court gives him that within its discretion.

A Yes, the Judge has decided that, but understand now, I don't think you will find it in any order, but many judges say we are appointing E. H. Luikart because we find he is qualified and we wouldn't appoint him if he was not qualified.

Q I don't dispute with you that a man who holds by virtue of his said office any judicial receivership is subject to removal any day by the court, if the court wishes to do so.

A Yes—regardless of whether he is Secretary or what.

Q That is another question but when the order says it appoints him by virtue of his said office, it is supposed to be what the court says.

A And what difference does it make? The power is all in the court whether he is a Secretary or not Secretary.

Q It makes no difference, but it is different.

A At that time they had some respect for that statute, which of course none of them now have, since the Supreme Court decided the Minatare case and some others.

Q That may be some of the courts but you wouldn't attempt to say what the different courts would do?

A Only what the Supreme Court says, and I find the different judges respect what the Supreme Court says and try to act on what the law is.

Q When the Attorney renders you a statement of account do you base your fees on that statement? What do you require in your statement?

A Yes, I instruct them, when they send in a bill—I instruct them to do it in this way, state what the subject matter of the action was, what have they done to earn the fee—for instance, a suit on a note, in what court the action was brought, the amount of recovery, the difficulty in getting the judgment, that is to say was it a default case or was it resisted, and also to send a copy of the journal entry of the judgment so that we can see.

Q Do you have these statements in your files in every case?

A Oh yes.

Q Mr. Williams says he has been unable to find that information in your files.

A Then he never examined my files.

Q Now, there is one particular receivership that the fees seem to be a little high: I would like to know what your statement is in that

case; that is the case of Citizens Bank of Stuart, the Flanigan Bank, $15,000.00 or more that was paid in fees in that small bank.

A Well, I thought it was around $12,000.00, maybe a little more. Have you formed an opinion on that matter? Do you think it is high?

Q I haven't seen the statement, the detailed statement of that case. I made a snap judgment that it was a little high for a small bank and I think I saw a copy of a letter from a depositors committee in which they asked to be consulted with reference to that fee, and you told them they had no legal status?

A They haven't, but if they have any objection to a fee, why, we are glad to listen to it, and if it is based on reason, we try to conform and see what can be done, and they always have an opportunity to go into court, you know, and suggest to the Judge that that particular fee should be cut down some.

Q Now this letter of December 7, 1933, to Mr. James P. Boler, Assistant Receiver, O'Neill, Nebraska, Re: Citizens State Bank of Stuart, reads as follows: "I have your letter of December 4, 1933, relative to the depositors committee requesting that we pay no more attorneys' fees until we have first submitted the bill to them. After studying this matter over, I find that we cannot comply with the request for the reason that this would be delegating our authority to a committee which has no existence in law and which has no authority whatever. You must understand that the receiver and the assistant are both under bond and are officers of the court and as such officers cannot delegate any of their authority. We file reports in every bank every quarter and the committee are at liberty to examine these reports, in fact, I believe a copy of the report is furnished for the committee. When they find an item for attorneys' fees paid which they believe to be excessive, they have the liberty of making objections to the court and having the matter heard in the regular way. This would protect every one and then no one would have reason for complaint." Now, stopping right there in the reading of the letter, I would like to ask you if the cash had already been paid to the attorney long or sometime before any copy of the receiver's report was filed with the court?

A Oh, no doubt, that is the case.

Q It is rather a late time then to make any objection to the expense, is it not?

A No.

Q Have you ever had any objections filed at any time after the Receiver's report has been filed and have attorneys refunded any fees?

A I don't recall any; I usually make it so that it won't be necessary.

Q Do you have the court's approval for the payment of any attorneys' fees?

A Ultimately, yes.

Q In what way, by specific court order or because you file—(interrupted).

A Not by specific court order; the reports are filed and if somebody wants to object, they can object at any time before the Receivership is closed, and before the Receiver is discharged the whole works is subject to review.

Q How many judges see that?

A See those reports? I don't know—it is before the court.

Q They are not sent to the judge, are they?

A They are sent to the Clerk of the District Court, the place to file them.

Q That is what the statute says, to the Clerk of the District Court Without any specific approval by the judge, you wouldn't regard that the same as a court order approving attorneys' fees, would you?

A That mere fact of filing, no, is not a court's order.

Q The court's approval even, is it?

A No, but ultimately that is either approved or rejected or modified, all depending on whether it is called to the court's attention and the fee is too large, whether it comes to his attention, whether he voluntarily does it on his own motion.

Q Now, the second matter—you say "We file reports in every bank every quarter."

A That was the practice.

Q Do you know that was the practice?

A I was informed by Mr. Hedge that is what they attempted to do although when so many banks came in during the season of 1932 for instance, and fall of 1932—well, that is the main time, the fall of 1932— when so many banks came in, I think it was practically impossible to do it.

Q Well then, you knew they had not been filed every ninety days?

A That they had not been?

Q Yes, you knew that when you wrote that letter of December 7 1933—you knew they hadn't been filed?

A Well, there was a period.

Q Of about two years?

A Oh no,—without a report for two years in that bank?

Q There was in every bank; there was a period there for about two years where there was not any reports filed?

A I don't know that that is true, unless it was along towards the end of the receivership when there was very little done.

Q Did you make any investigation to find out whether those reports had been filed in every bank every quarter before you wrote that letter?

A No, but I knew that was the policy of the department to get that up every quarter, if possible,—at least I had been so informed.

Q Why hasn't the depositors committee received copies of these reports?

A Of the receiver's report?

Q Yes.

A I can't tell you.

Q What is the use of having a depositors committee if you don't confer with them and give them some legal standing?

A The report is available to them: all they need to do is to go and examine it, and as I understood Mr. Hedge to state here, the practice has been to make an extra copy and send it directly to the committee.

Q Yes—since when did that start?

A I don't recall when that started.

Q Well, what is the use of having a depositors committee if you don't confer with them and give them some legal standing?

A They have no legal standing; that is not our fault.

Q Whose idea was this depositors committee?

A Well, I think it originated with Governor Weaver.

Q Are you sure of that?

A Yes.

Q And what was the idea of having them at all?

A I don't understand what the original purpose was, but I would say as far as I am concerned, my idea would be as they are used now, in the sale of land—they are conferred with on what that perhaps should bring and mainly on compromises of indebtedness, should it be compromised, should it be compromised on the terms proposed.

Q Do you pay any attention to them when you find out what they want?

A Absolutely, and hardly ever—I don't know of any occasion—there might be such—but that their recommendation is in the application asking for the compromise—their written recommendation is in there.

Q For the compromise of assets?

A No, not for the compromise of assets.

Q Wait a minute; who selects that depositors committee?

A I think the receiver has done that.

Q What is the use of having the receiver select the depositors committee?

A I think he would be competent to determine a man's qualifications to act on the committee. Somebody has got to determine it.

Q Who are the owners of the assets of a receivership?

A The corporation.

Q A corporation?

A In the judicial receivership it is the corporation; in the administrative receiverships, the Department of Banking.

Q Well, who are the owners of the assets of the Security State Bank receivership at South Omaha?

A I don't know; I didn't know there were any assets there.

Q Well, they continued it as a receivership for about—I guess it is going on nine years.

A That bank is outside of my experience, you understand.

Q Yes, but who is the owner of the receivership assets there, if there are any assets?

A The assets, as I understand, in that bank were sold to the Guarantee Fund Commission, so that the Guarantee Fund is the owner of the remaining assets there. Now, that is my view of that; I may be wrong.

Q They continued that receivership and they have got cash in that bank, a little balance yet?

A No doubt they have.

Q Who are the owners of that cash in the bank?

A That is a judicial receivership; I would say that the corporation is, the banking corporation, and it is a separate—(interrupted).

Q You know what I am leading up to, don't you?

A No, I don't.

Q That the Security State Bank was continued as the South Omaha State Bank: wasn't that the corporation?

A I don't know. That was a peculiar particular act; I think we ought to get that in the record.

Q All right, put it in right now.

A It has been repealed since then. I think you will find that on page 453 of the 1923 Session Laws, Section 28 of that particular Act, and perhaps I better read that into the record.

Q Yes, go right ahead. What are you quoting from, what book?

A Page 453, 1923 Session Laws, Section 28: "Whenever a receiver or representative shall be in charge of a bank or receivership under the direction of the Guarantee Fund Commission, and such receiver can procure lawful purchasers for the assets and capital stock of such bank, then such receiver or representative may, with the approval of the Guarantee Fund Commission, and the Secretary of the Department of Trade and Commerce, petition the District Court of the county in which said bank or receivership is located for an order decreeing such bank to be insolvent, if a going bank, and directing the sale of all of the property and corporate rights of such corporation upon such terms and conditions as to the court may seem proper. Notice of such hearing shall be in the same manner as for the appointment of a receiver under this act. If the court, upon the hearing thereof, shall find that such bank is insolvent, or in receivership, and it is for the best interest of all creditors of such corporation, then the court shall issue an order directing the receiver or representative in charge, as receiver, to sell such banking corporation and its assets as prayed. The Court shall determine at such hearing, the rights of the creditors, including depositors, as

nearly as possible, and shall direct the notice to be given and the pleadings to be filed for the determination of the rights of creditors whose claims are not allowed at such hearing. The Court shall authorize and direct the receiver to issue from the stock book of such corporation, certificates of stock to the purchasers thereof, and upon the delivery thereof and the compliance with the terms of such sale; such purchasers shall be and become the only lawfully constituted stockholders of such corporation, and as such shall proceed to organize with the proper officers and directors for conducting a banking business. The Department of Trade and Commerce shall require the officers to file the report provided for in Section 7996, Compiled Statutes for 1922, and if upon examination the department finds that such corporation has complied with all of the requirements of law it shall issue to such corporation the certificate provided for in Section 7995, Compiled Statutes of Nebraska for 1922, and shall return the charter of such bank to the corporation herein provided for." That is a very peculiar thing.

Q What is that Section 7996?

A That, I think, is the certificate from the department authorizing it to do business.

Q Isn't that one also showing how the stock was purchased by the new purchaser?

A I couldn't say.

Q And in the South Omaha State Bank, in the examination of the contract, (Exhibit No. 8), that was filed with the court and approved by the court, it doesn't show where they were to pay anything for the $100,000.00 worth of stock they were to receive, so they didn't conform with that statute, did they?

A That may all be.

Q At least, we have the statute in the record, haven't we?

A It must have been clear and apparent from what was going on that the reorganized bank is the one who was to assume the depositors obligation.

Q Then the receivership should have been ended right then?

A That may be true; I don't know, because I had nothing to do with that thing. That is a very, very peculiar statute—I don't know.

Q The old stockholders should have been consulted and everyone else in a hearing like that?

A No doubt they were; certainly, as I understand it, notice was given, at least by publication, if not otherwise, and that there was an open hearing on notice before the court that handled that matter.

Q I think we have a case recently saying that there is a special duty on the court to inquire into the facts more than other proceedings in such a proceeding as that.

A Did you inquire into the evidence taken by the court at that time?

Q I have gone over the pleadings and the prayers and the orders and

everything that there is there. The court gave permission to remove part of the files.

A Did you inquire from the reporter as to the notes that he took?

Q I got the brief filed by Mr. J. E. Bednar, who was attorney for the old Security State Bank, in which he alleged that the whole business was illegal; he also has been attorney for the Security State Bank, and he stated that the quotations he cited in his brief from the Bill of Exceptions were true, and I thought his statements could be accepted.

A Well, it was a very peculiar proceedings to say the least.

Q In 90 A. L. R. 403, Judge Brandeis of the United States Supreme Court is quoted in his opinion in the First National Bank against Flershem, and he states, "In receivership proceedings, as was held in National Surety Co., vs. Coriell, 289 U. S., 426, 436, 88 A. L. R. 1231, every important determination by the court calls for an informed, independent judgment, and special reasons exist for requiring adequate, trustworthy information where the jurisdiction rests wholly upon the consent of the defendant who joined in the prayers for relief." Now, isn't that what they did there? They got Mr. Rathsack and some of the Board of Directors to sign a consent.

A Sort of a consent receivership.

Q Consenting, and that was considered to be binding on all the stockholders, and therefore, in an hour's time they got the receiver appointed, they got a bond filed and approved, they got the assets sold, they got $415,000.00 receiver's certificates allowed, and they got the sale confirmed, and I don't remember what else.

A And the assets transferred.

Q In an hour's time and that occurred without anything else?

A That may be; however, the court's opinion there may be based on the Federal common law, and there may be some particular Federal Statute that is in no way similar to this statute here.

Q It may be and it may apply to all receivership proceedings except a Federal. We think it is a matter of substantive law applied to all receiverships.

A Federal receiverships are usually different. May I make a statement here?

MR. WATSON: Yes.

MR. RADKE: On the matter of attorneys' fees and the receiver's rights to pay attorneys, see the case of State vs. First State Bank of Bethany, I believe.

Q Now, Mr. Radke, will you take a look at these receiver's reports of the Citizens Bank of Stuart and state to the reporter the date of each report beginning with number 1?

A Number 1 is May 12, 1931; Number 2 is July 18, 1931; Number 3 is February 25, 1933; Number 4 is December 22, 1933; Number 5 is February 18, 1935.

Q Now, in Exhibit No. 70, your letter re Citizens Bank of Stuart, that you wrote December 7, 1933, stating, "We file reports in every bank every quarter"?

A Yes.

Q Now, on December 22, 1933, the receiver filed report No. 4, which was the first one since February 25, 1933, when No. 3 was filed, and No. 3 came, oh, more than a year and a half after No. 2, which was filed on July 18, 1931; and No. 5 has not been filed for over a year after No. 4, the delay in the last case probably being due to the fact it was an old trust, but it does show that there has been much more than ninety days in between the reports in this receivership and that it would not be very easy for the depositors committee to get the information you indicated. Also on schedule X in report No. 5, there are no dates showing when the receiver paid the attorneys' fees although there are several large items of attorneys' fees; Frank Warner for attorney fee in re Shank, $500.00; Frank Warner, attorney's fees re Shank $1,250.00; Walter Clare $75.00, Richard Johnson $75.00, Mesinger et al $75.00, Glen Forgey $75.00, Leo Willcuts $75.00; I. J. Dunn, attorney's fees, balance due on cases as to John and James C. Flannigan, Thomas Mains, and American Surety Company, $3,500.00. Now, there is over $5,000.00 of attorneys' fees there being reported at once and there are a lot of cases without any itemized list that the depositors committee could refer to; how do you expect the depositors committee could judge from the receivership report filed with the court in that case?

A The report there is complete—shows what it was paid out for and the amount. I think that receivership ought to get a little statement concerning fees and what was accomplished there.

Q The total legal expense up to February 18, 1935, on this Citizens State Bank of Stuart was $16,055.66. Of course, I might state for the record, that that includes the court costs too—does it not?

A All court costs, yes, which was considerable.

Q How much did that man I. J. Dunn get out of this—what was his total fee, do you remember?

A My estimate is around $4,500.00 or $5,000.00—near that—then he complained that I was just paying him plumber's wages.

Q Well, plumbers get paid pretty well these days.

A He said it with a good bit of contempt He was rather critical and perhaps, judging from the amount of the work and results obtained, they were about on that basis. Mr. Watson, in that receivership, there were practically no assets when the receiver took charge.

Q Yes—go ahead.

A All right—this is what happened: along in August, about, of that year, whenever the bank was closed, as I recall the record, Mr. Flannigan stated that he would proceed to refinance that bank, repair its capital structure, and otherwise repair it, but what

actually took place was that immediately after that promise, and right following, I think, an examination, it seems that he made a deliberate practice of cleaning out the whole bank by preferring all his friends by delivering assets to them for their various deposits. So that the general result was, when the receiver was appointed about in December of that year, and it might have been 1930—I think that receivership was on sometime before I came to the department—there were practically no assets left in the trust. There are four different cases, the leading case in which the Supreme Court opinion is, is Luikart vs. Hunt. In those four cases we recovered $63,000.00 worth of assets, and that was a long, hard fought series of cases—had to go to the Supreme Court—and that is the thing that put assets into that bank, and without that there would have been nothing, practically nothing for the creditors.

Q And who were the attorneys for that case?

A Mr. Frank Warner and I. J. Dunn. They were on that job before I ever had anything to do with receiverships of any kind; they performed a very valuable work, in fact, it was a new kind of litigation.

Q Over how many years did that extend?

A Well, they were employed, I think, right immediately after the receivership in the fall of 1930, and it is still in process, so this pay is for both over a period of years, it may be now.

Q Well, did they assist in the criminal prosecution?

A Well now, that is what I don't know; I believe that the County Attorney and the Attorney General's office conducted that criminal prosecution against the Flannigans; the Special Deputy of the Attorney General was a gentleman from Omaha—what is his name?

MR. HEDGE: Stallmaster.

A (continued) Stallmaster—yes.

Q Did these attorneys assist, to your knowledge, in that criminal prosecution?

A I don't know.

Q I think the committee has enough evidence on that. If it isn't too much trouble you might give us a statement from your accounting department, what the total fees were paid to Warren and the total fees paid to Dunn, in regard to that trust?

A Oh, I think we can easily get that; Mr. Hedge can get that. May I complete that statement?

Q Yes—go ahead.

A In those cases—they were preference cases—that was the first attempt by a receiver to establish a law of preference in this state; that was a new subject that had to be briefed from the beginning up, and we had no precedents to go by in this state, and the result was a winning in the District Court, and then there was an appeal —the Harringtons were in opposition there—and we got a favor-

able action from the Supreme Court, and it declared new law in connection with that kind of a case. Now, the consensus of opinion seemed to be that there could be no recovery in situations like that because of this item, that the transfer would have to be made on the basis that the person getting the preference knew of the fact that the bank was insolvent, and that he was getting a preference, and that we would have to prove that fact. Now, we have that point settled.

Q Were I. J. Dunn and Warner men of high standing at the bar?

A Mr. I. J. Dunn is of very high standing. Now, Mr. Frank Warner was a very good lawyer, I understand, but his methods of general business conduct—I don't want to malign a person who is dead,—but his methods of general business conduct did not meet generally with my approval.

Q Who appointed these two men?

A I don't know. In all these law suits he worked very efficiently and as far as I can see absolutely faithful, and that his conduct was above reproach. Later on I heard that action was started by Attorney General Sorensen against him to disbar him for some alleged misconduct of some kind somewhere. However, that action was dismissed by the Supreme Court sometime last year.

Q I think the record shows now that your statement in this letter about reports veing filed in ninety days was incorrect?

A That is, I was not checking up whether or not in this particular bank they had come there particularly on that date, but I was informed what the policy of the department was on the receiver's reports there every quarter, and that is what I based my letter on, but I never got any complaint back from the depositors committee or any creditor that there were no reports on file by which they could inform themselves.

(At this time a ten minute recess was taken.)

MR. RADKE: I would like to supply a little more statement in connection with these reports.

MR. WATSON: Well, I am going to have Mr. Hedge call that up.

MR. RADKE: There is one little statement I might make.

MR. WATSON: Make it brief then.

MR. RADKE: That for a considerable period the receivership process was largely held up pending the outcome of the preference cases.

MR. WATSON: Is that all?

MR. RADKE: Yes.

Q Now, you started to explain what you could do with the depositors committee: you didn't get a chance to finish that statement—I asked you what was the legal status.

A They have no legal standing; the depositors committee is used in

determining what shall be the basis of a compromise if and when one is to be made, also get their views on the sale of real estate, and they are also consulted as to whether or not and when to sue persons who do not pay, that is, where it is a large matter and it is of some importance.

Q Are their wishes conclusive on your actions in any manner?

A No; I will give you an example of that down at South Omaha.

Q Well, I don't care about the example, because it is apparent from the evidence already.

A They are only advisory and purely voluntary.

Q What has been the procedure of the department in securing the approval of the court on compromises and sale of assets?

A Yes; they all do that.

Q Where hearing is held upon the matter?

A The debtor makes an offer; we ask that that offer be in writing, and that he accompany that with a sworn property statement. This matter is submitted to the depositors committee by the assistant, and they consider the matter and make recommendations. These recommendations are then forwarded to the receiver and are thoroughly considered by him. If he approves he will make an application to the court and include therewith, as an exhibit, the recommendations of the depositors committee, as well as the offer of compromise. That is submitted to the court.

Q The same rule holds in all courts?

A Yes.

Q Was a hearing held then?

A Then the matter is submitted to the court and he usually examines the proposed compromise, with the various recommendations, and if he is satisfied with it at that stage he will sign the order; if not the court asks for further testimony, and we often have hearings where testimony is taken.

Q What judicial districts require hearings?

A Well, they all do when they are not satisfied.

Q Well, do any judicial districts require hearings on all matters?

A No; when they are satisfied on the face of it, why, they sign the order.

Q You take in your petition, with the exhibits, and get your order at the same time?

A Yes. Let me add, that many judges state that when the matter comes recommended by the receiver and the committee, the courts have high respect for the department's recommendation and ordinarily accept it.

Q In your opinion do you think the courts should be or would be any more lenient upon the banking department acting as a receiver than they would be with an individual?

A No, I don't think so.

Q Have they been more lenient in your opinion?

A In respect to compromises?

Q Yes.

A I can't say; I really can't say, because I don't know just how they do where there is an individual local receiver.

Q I take it that they take it for granted that a well organized banking department would make a more thorough organization than a local receiver?

A That is true, because every judge in the state is pretty well acquainted with the men employed in the Receivership Division; they are well acquainted with Mr. Luikart, the receiver in judicial receiverships, and so with Mr. Stoll, because of his long and excellent service, and the same is true with Mr. Downing. By the way, Mr. Campbell, whom you know, has the job of classifying claims and is an attorney as well as a banker.

Q And he classified the Hugo M. Nicholson fees claim of $7,500.00 as no good?

A Yes, sir, and I agreed with him.

Q That case has never been decided?

A That case has never been decided.

Q Why wasn't it decided for thirteen months after the hearing?

A I will tell you—you will have to get that answer of Judge Chase, who has the case under advisement, and I can't tell you.

Q I asked Nicholson—did you see this court entry April 14, 1934, case heard to the Court—Judge takes case under advisement pending filing of brief? I said, did you file any brief? No. Did the State file any brief? No. I said, Well, did the State ask you to write up and file any brief? He says, not that I remember. I said, I can't understand why a case that has been heard and tried hasn't been decided for thirteen months before a sale took place.

A Understand, he is the plaintiff in that case and we are defending; our position was that we were only here because of rejecting it. The rule was first on him to file his brief and we would answer it.

Q But it was to your interest to have that case decided?

A Yes.

Q And I don't see why you would permit his dilatory tactics without some request of the court for a decision.

A Just a minute—here is the truth of the matter: there has been plenty of effort made. Mr. Gartland tried that case and I know he has conferred time and again with Nicholson's attorney, Moody, in regard to it, but no action could be gotten. The court for some reason didn't take action, and you know the courts who have matters under advisement don't care to have their attention called to those things; they resent it.

Q I don't appreciate, at least like the idea of constantly preaching what the law is—I feel like a country school teacher—(interrupted).

A Go ahead.

Q But in that case it occurred to me that I would have refused to acknowledge that $3,500.00 credit because Nicholson admitted to us that he had helped the Leisys make all those transfers on the 10th, on the same day he wrote that check, so I would say, our claim against you is not $6,700.00, or the reduced amount of the note, but $3,500.00, the amount of the check, plus $6,700.00, reestablishing the payment on the note and suing for the whole amount.

A But that is a separate cause of action growing out of another matter, and in my opinion not a subject to be raised by us in cross-petition here. This thing was his claim.

Q Set it up anyway; you can go and set it up.

A And I seriously doubt if we could have gotten any recovery from him at all; the consensus of opinion was that he was not good financially, couldn't be made to respond financially.

Q Who, Nicholson?

A Yes.

Q Oh, he has a fine financial standing; Nicholson has got the best reputation around that county, from the conversation I had with various people.

A They haven't very much respect for his note.

Q That is the reason why I was interested in having Nicholson as our chief witness in that deposition at Wisner, because of his reputation, and from the fact he was an interested party and testifying against his own interest, I think you can rely a lot upon the statements made against his interest. You testified in some instances you raised the fees of attorneys.

A In very few cases.

Q Can you raise the fees of attorneys whenever you like?

A No.

Q What were the cases?

A Well, here, I think I recall one instance, that an attorney had put down the fee that he thought he was entitled to have. I felt there was a mistake in it; I called it to his attention and we discussed the matter, and he said yes, such and such did take place. Then I said, do you believe that your fee as stated there is in justice to yourself, and he said no; so he changed it, raised it. That is rare, understand; the attorneys hardly ever make a mistake in the amount that they claim; it is usually the other way.

Q Mr. Oleson stated that because he made this attachment of the Hugo Leisy property without your authority, he got a red hot letter from Nye saying he acted without authority, and they criticized him for it, and he couldn't understand, with this attachment which he considered was for the interest of the property owners,

because of the large attachment of the Leisy family, why that hadn't been retained to get $25,000.00 for the depositors rather than, oh, I think you got $16,000.00 or $17,000.00 acutually in your other settlement, and he claimed that he couldn't understand your criticism, also in view of the fact that after he made his attachment Hugo Leisy did try to transfer the very property that he had attached, and it was his attachment that saved that property and probably helped to put through the settlement that you made for less than $25,000.00.

A There may or may not be some truth in that, but the main reason why I took action was that the assistant receiver was complaining, Doty was complaining that the committee was troubling him about having Andy Oleson as local counsel, because of his drunkenness and inattention to duty, and he would go out on the street and tell everybody what he was going to do, ahead of time, which would give them particular warning on that and would be to the detriment —(interrupted).

Q As a matter of fact it would have been better from the department's standpoint, if they had not retained Mr. Oleson, if those were really your views, and he brought out there were several men there in town who started rows, probably about the $3,500.00 preference to Nicholson, who came down here to Lincoln and consulted with Bryan and Luikart and you, and immediately he gets this letter from Nye accusing him of attaching the Leisy property without authority, and then when you appointed Nicholson's law partner as attorney, which was adding insult to injury, he didn't like it.

A They just couldn't work together.

Q He wasn't the proper kind of a man; he was too close to Leisy's side.

A Which I think was an unjustified statement.

Q We have no evidence of drinking of Mr. Oleson; that is purely a story of Mr. Downing who said he smelled it on his breath; and your statement of drunkenness, we didn't hear that; we asked the President of the First National Bank, the officer in charge, and he said Mr. Oleson, like many another, likes liquor occasionally, and still he has a high reputation for paying his billls and financial ability; he is a former member of the Nebraska Constitution convention and served in the Senate in 1903, and brought this statement right down to date.

A And during the Constitutional convention of which I was a member, he got into a big poker game and left the convention two weeks before it adjourned, and refused to pay his poker debts—went home thoroughly discredited.

Q And here is another thing: the very man Doty that you mention is quoted as follows—I think Oleson is on the stand: "Those mortgages and deeds came on after you filed your attachment suit?

That is right, after I levied the attachment. And if it hadn't been for your attachment—I wouldn't say that, but I levied the attachment and got hold of the property. Then is when I began to be censured by Doty, the assistant to Luikart, and he called me on the carpet and told me, Here, Mr. Oleson, you can't do things. I think he said that I am supposed to be here to look after depositors of the bank, and said here, this is a matter of politics and you have got to cut that out or you will lose your job and I will lose my job. I said if I am going to mix my business with my politics, I will quit right here. Are you a Democrat? You're damn right I am; I am not so much of a Democrat right now."

A Well, I had always understood he wasn't a Democrat; that is the first time I ever heard he was, and he also says not a very good one—well, I guess that is true. However, that attachment, as I recall it, and I don't know about the details about these transfers, when they came and when they didn't, but seriously, as I recall, it interfered with a very good settlement with all of the Leisy family.

Q I should think it would have helped obtain a settlement.

A Because that was driving them all into bankruptcy; if that had happened you wouldn't have got it; they had many thousands of dollars of other creditors.

Q You will admit it looked very irregular to make over one hundred thousand dollars of transfers at one time, and then have Leisy make all these transfers which came to Wisner too late, after this attachment had been filed? We have got his memorandum to you to that effect.

A That may be true.

Q By the way, I would like to call this out for Mr. Oleson's case: you said you fired him; as a matter of fact Mr. Nye censured him very severely for that authority, and he wrote back and said "Then I will quit." Mr. Nye wrote back and said, Well, as far as that is concerned maybe it would be better, and that ended his service.

A Yes, that is about it.

Q What have you done in the matter of stock liability of C. F. Gund in the matter of Campbell and four other banks in which he was a stockholder?

A I can't answer that; Mr. Nye had charge of the stockholder cases, while he was with me, and now Mr. Miles, and I can't answer that.

Q Now, you conferred with Mr. Nye on cases of importance like that, didn't you?

A That is no more important than any other stockholders cases. He was a very competent lawyer and took care of them.

Q Will you state to the committee here you did not confer with Mr. Nye as to the terms of the settlement on the C. F. Gund stockholders—

A Absolutely; he had charge of that; the settlement, of course, would

have to be with the approval of the committee and the receiver, and I did not give that my personal attention, couldn't myself; I had hundreds of contested claims cases. Maybe I better right here tell you how our legal work is divided up, so that will be clear. The legal work is divided up like this: My first assistant has charge of stockholders, directors liability cases and preferences.

Q That was Mr. Barlow Nye?

A That was Mr. Barlow Nye; now it is Mr. Miles. Mr. Gartland has charge of foreclosures and claims in County Court, deceased stockholders and debtors. Mr. Holtzendorf now is a member of the force and he has charge now of County Court matters and selling the remaining assets, and Mr. Gartland is chiefly charged with looking after foreclosures, which is a very large piece of work and on which we can save lots of money to conduct it from this office, and myself, I supervise generally the work, see that it gets done, and have charge of the allowance of attorneys' fees, trying all of the contested claims cases of which there have been hundreds—I have perhaps tried more than one hundred a year—and all the appeals in the Supreme Court, and during a four year period I have probably briefed and presented to the Supreme Court about 135 cases or more.

Q Well, I am glad to have that statement in the record, but in this case I thought you might know about it because Mr. Gund was a stockholder in five banks, the Bank of Campbell, Cowles State Bank, Upland Banking Company, Bank of Rosemont and Exchange Bank of Bladen. In the Bank of Campbell where we had a complaint from the depositors committee, they stated that your office had recommended that they settle a $16,000.00 stock liability for $100.00; is that true?

A I don't know.

Q Well, they stated that was true?

A As I understand, Gund is insolvent and you can't collect from him, and these stockholders cases, if they are filed, are all premature, must be dismissed or maybe they are dismissed—however, maybe we can get the whole record for you.

Q I have a quotation here from a letter dated April 3, 1934, from Charles S. Stone, Assistant Receiver at Bladen, to Nye, who writes as follows—letter February 21st contains some reason—further that from Gund's property statement I do not feel that he really has listed all his holdings. Lately a considerable amount of transfers have been made. "I have been informed that Gund was getting $5,000.00 per year under a three-year contract to liquidate the bank at Crawford." Now, a man that is getting $5,000.00 a year to liquidate a bank at Crawford is not insolvent, is he?

A No, not exactly, but here is the trouble: these stockholder liability cases are contingent liabilities that you cannot enforce until the bank is liquidated, and there would be no way of reaching that

stuff, absolutely none, and prevent transfers; you can't do it; you don't have a cause of action until the bank is liquidated.

Q Here is a letter of November 28, 1933, from Nye to Hiebenthel, Assistant Receiver at Campbell: "I have your letter of the 24th in which you state that Mr. Gund has recently mortgaged some of his property for the sum of $6,000.00. I have written to him concerning the $2,000.00 mortgage but as yet have no reply. I will keep this matter in mind and should Mr. Gund refuse to make some proper adjustment we will probably have to place him in bankruptcy." Here is a letter from Gund to McNeny, an Attorney at Red Cloud, dated December 22, 1933: "My Lincoln property is rented to E. H. Luikart." Did Mr. Gund own the property in which Mr. Luikart lived in Lincoln?

A I have never been so informed. My information is this, that Mrs. Gund owned that property; that Luikart moved into that property long before he became head of the Banking Department and continued in it after that, and that it is Mrs. Gund's property and not his.

Q Here is a pencil notation on the bottom of a letter from Arthur Hittner, Assistant Receiver, to Mr. Radke, re: Stockholders' Liability—Campbell: "Nye—Mrs. Margaret Gund owns the house in which I live. It is mortgaged for $5,000.00 but would sell for $7,500.00. E. H. L." Is that your understanding?

A That is the idea.

Q Now, this member of the depositors committee at Campbell tells us when you asked them to settle this $16,000.00 liability for $100.00, they said, "Well, if Mr. Gund is so hard up that that is all they can offer, we would rather let him keep it."

A Well, did we ask them to do it or just submitted it to them for their consideration?

Q I think it was just put up to the Assistant Receiver.

A You would know they couldn't approve that because that is such a ridiculously small amount. He made the offer and it should be submitted.

Q Here is my notation from talking with Mr. Endorf, a member of the depositors committee: "Department asked to O. K. settlement with Gund for $100.00. Refused to do it.

A I doubt that it was there as a request—that the offer was submitted to them for their consideration—however, Mr. Nye would know those details. I hope you call him. Now, generally, as to this stockholders liability, it is just a situation like that that caused me to prepare another case to go to the Supreme Court to see if we couldn't induce them to reverse themselves in the Payne case, and if you will notice, the last legislature proposed a constitutional amendment to repeal this stockholders liability, and if that is a crosscut section of what the people of the state want, you can see how difficult the stockholders liability collection is.

Q Have you ever done anything to set aside any of these transfers?

A In these banks that you mention?

Q In the Gund case?

A I don't know.

Q Mr. Endorf told me, he said Gund owned ninety per cent of the stock; a committee went to Lincoln less than a year after the bank failed, talked to Bryan and Luikart—took Marshall of Riverton along as trust attorney—told us Gund was broke—we knew he had a building clear here in Lincoln in which Mr. Luikart was living. Every farm he owned in Webster County was deeded to Bank of Blue Hill and from that bank back to his wife.

A What bank is that you referred to there?

Q Bank of Campbell.

A Well, in answer to your question, if you take action to set aside these transfers, you can't—you have no cause of action.

Q Haven't you got an action?

A No.

Q Didn't you file a suit before the Supreme Court, based—(interrupted).

A If there is, it was dismissed as prematurely brought, no doubt.

Q I looked at one of these Gund cases at Red Cloud; I don't know whether it was this particular Campbell Bank or another bank in which he owned a lot of stock, and a judgment was taken against Gund and the case was continued against the ladies in his family, the sisters or wife or whoever they were in the Gund family to which the depositors committee claimed the property had been transferred; then later came along the Supreme Court case and the case against the women never went to judgment.

A They could enjoin the present judgment and you couldn't get anywhere with it. You know a man has a right to prefer his creditors.

Q Well, did you investigate for excess loans there?

A Personally I didn't. No doubt Mr. Nye did, so I again suggest that you examine him on those things.

Q Well, if there were any violations of law there, the directors might have been held on their directors liability as distinguished from the stock liability, and you could have set aside the transfers on such a liability.

A There could have been an attempt to but you know the success of those cases.

Q And if there had been any notes in any of these banks signed by Gund, you could have put any of those notes in judgment and then set aside the transfers, couldn't you?

A Based on such judgments, if there were such notes, yes, but whether or not there were such notes is a matter that I have no information on; I doubt if there were.

Q Saturday morning we received a telephone communication stating a complaint about a bank that we haven't had time to examine, down near Tecumseh, I believe, the First State, Pawnee—is that the one that closed?

A First State of Pawnee City—there is one there.

Q Did you make an investigation? Has a suit been filed for excess loans in that bank?

A I don't know; that bank was in liquidation long before I came to the department, and I inherited a piece of litigation there in regard to a deposit made by a guardian of an incompetent war veteran, and that is about the only litigation that I had anything to do with.

Q I was informed that an investigation would show excess loans had been made in that bank; did you ever hear of that?

A No; I don't know if it has ever been audited.

Q Will you give us the records of when the suits were filed for excess loans at Calloway, for South Omaha State Bank, and Verdigre?

A Calloway and South Omaha were filed this year.

Q And Verdigre?

A Verdigre, I think, was filed maybe two years ago. We had trouble getting the issues made up there, demurrers and motions, endless and transfers to the Federal Court, and down to Omaha, and transfers back again, and as I say, that by the way was the first case of its kind that I undertook in having judgments in three different cases, $15,000.00. However, understand that the big trouble will be with the collection, because the National Surety Company has by some hokus pokus arrangement in New York transferred all its good assets to the National Surety Corporation, without assuming the debts of the company, and we are going to have some real hard litigation to collect those judgments.

Q Do you mean by that it is so difficult to collect a debt of a director on an excess loan because of the dilatory tactics of the other attorney, you don't like to do that?

A The only way you could collect there was by reason of a bond given by the banker personally.

Q Are those the only cases where you attempted to collect there for misfeasance?

A Verdigre is one, South Omaha is another, Calloway is another; there will be one down here in Franklin County, the Exchange Bank at Hildreth; there will be one out here at Greenwood; I don't know —there might be some more.

Q What became of the practice of filing the schedule of attorneys' fees which they used to have?

A Where, and when, and what—I don't understand your question.

Q You have a schedule of fees which you send out to attorneys who are employed, don't you?

A Yes.

Q What do you pay for a full day in court?

A We will get this schedule; that will speak for itself.

Q I have a copy here which shows full day in court, $35.00, day outside office $25.00—(interrupted).

A I would rather you would permit me to get a copy of it and put it in the record.

Q Yes—will you please do so?

A I will get one. On most matters such as collections and those things, all those rates obtain.

Q Do you consistently follow that schedule?

A I try to follow that, almost religiously, and I don't know whether I have said—we have attorneys who have refused to be employed on that basis. Before we forget it we better put in the record the case of State vs. First State Bank of Bethany, 123 Neb. 620; 243 N. W., 877, the syllabus is as follows:

"1. Reasonable fees for necessary services performed by attorneys for the receiver of an insolvent State bank may be allowed as an expense of the receivership.

"2. The allowance of reasonable fees for necessary services performed by attorneys for the receiver of an insolvent State bank will not be reverse on appeal in absence of an abuse of discretion by the trial court in making the allowance."

Q That is when the court approved the attorney fee; how often do you get the court's approval—that means the specific order of the court?

A We have the court's approval in 181 different banks.

Q You have the specific approval of attorneys' fees paid, by court order?

A Yes, sir, in 181 different banks, and some more than that.

Q That isn't all—why didn't you have it in all?

A Because that is useless.

Q If it is useful in 181, why not in the others?

A Because there is need if we disagreed on the fee and it had to be determined by the court.

Q Mr. Williams, in examining the Battle Creek Bank, discovered where a stockholder with two shares of stock had offered in settlement a credit of $27.00 on dividends paid and offered $150.00 besides of his $200.00 levy which was refused and turned down, and you turned the claim over to an attorney for suit and paid the attorneys a 40% fee to collect this claim in full, a $200.00 claim, or around $70.00 was paid in fees; this netted the department $130.00, while if they had accepted the money without suit they would have received $177.00: he wants to know why you turned it over to an attorney in that case?

A I don't know if that is true.

Q Well, it so showed on the record of this department. If it isn't true, show us the record that it isn't true.

A Well, if it is true, perhaps it is by reason of the fact that when you once start compromising early in the game, then you have got a terrible situation, everybody is demanding a compromise and it is better to make them pay, even though you have to pay out a fee in one or two instances right in the beginning, to make them pay what they owe, and the result will be in the form of dividends on the others.

Q Well, there is one thing that has come up to us at various times, where members of the legislature had asked you to compromise claims—I don't know why, but I presume for other people who have come down here—have you had any members of the legislature?

A Oh, yes.

Q Who, for instance?

A A lot of them—I say a lot of them—I remember the Senator down at Alma, what is the name—the one-armed man?

Q Neubauer?

A Neubauer—he appeared once, and E. Preston Bailey.

Q What is the nature of that?

A Oh, purely coming down there and trying to use their political influence on us, which won't work.

Q You remember the late W. B. Price stated the justification he saw for the investigation was to get the Banking Department out of politics: now, when we investigate any of these matters here, we would like to follow it through, regardless of the parties involved. Now, in this case, how often does the legislator come down here and make an effort to influence you?

A There were some I know of personally; there were others that I can't recall, but their political influence didn't work; it didn't have any effect on the personnel that I know of.

Q Well, we will ask you to report back on that and give us all the instances you can.

A I will try to find some more, and if I do I will let you know about it, but that is no place for a political influence to work, and so far as I know, it didn't work, and of course we get in bad, I suppose, with those particular ones.

Q You left a notation on the desk here regarding the department's right to revoke the bankers' licenses: you thought with that you could force compliance with the law by the banker or force him out of the bank: haven't you got that power?

A Well, there is power there but I don't think it is clear enough and sufficient enough.

Q Have you ever tried to enforce it?

A Well, of course, I haven't been called in very much.

Q The law specifically states that the license shall only be issued to a banker when he has full compliance with the law, and can be revoked by the department. That has occurred to me before, why the department hasn't revoked these licenses. The Leisys were all licensed but every examination said the management is poor.

A I don't know why the head of the Banking Department does not use that more drastically, but there is room for amendment there to the statute.

Q Do you know of any occasion where one banker's license was revoked, and then they turned around and hired another banker from some failed bank to take his place, and then licensed him?

A No, I don't; no, that is outside of my knowledge.

MR. WATSON: We will now identify the schedule of attorney fees, concerning which Mr. Radke has already testified.

MR. RADKE: Exhibit 71 is a copy of my schedule of fees.

Q Do you conform to that schedule in every instance?

A I try to apply that schedule very closely.

Q And require itemized statements?

A Yes sir.

Q And those itemized statements are in your file?

A They are.

Q In making up the reports?

A All the attorneys fees paid you will find a bill there, I think, and and my recommendation on them, sometimes cut and sometimes not cut, and I have tried to conform to that schedule and that you will find far below the local bar association schedule.

Q Have you filed any action with reference to a repurchase agreement as to whether a transfer of assets in a repurchase agreement was a violation of the law regarding the transfer of excess collateral to secure bills payable?

A Well, it didn't come up quite like that; however, I have a copy of this particular repurchase agreement that is involved in about a $23,000.00 law suit with the City of Omaha right now. I would like to put that copy in the record, if you want one.

Q Now, I don't care to have that purchase agreement in the record but I would like to know the name of the case?

A The case is the State Bank vs. Omaha, City of Omaha, intervener. It comes up like this, the directors of the State Bank of Omaha passed a resolution on December 17, 1930, authorizing and directing Mr. Schantz, President of the Bank, to enter into a repurchase agreement with the First National Bank of Chicago by which bonds, I think bonds, a whole list were sold to the Chicago Bank under a repurchase agreement, to the extent of about $400,000.00.

The bonds were all delivered; the State Bank of Omaha got credit in its account in Chicago, and when the bank closed the next year in August, 1931, the Chicago Bank still held a large amount of these bonds and later the receiver, I think, repurchased some of them because they were a good investment and they would bring revenue pending a dividend.

Q And what are you suing for?

A Well, they are suing; the City of Omaha is suing.

Q What are they suing for?

A They said, well these bonds when the State Bank of Omaha got them were Village of Dundee bonds, and that the Village of Dundee bonds became the obligations of the City of Omaha and all the time that that State Bank of Omaha so held these bonds they were an obligation that the City owed the bank, and the bank owed the city on deposit, and therefore they were entitled to have an offset of these bonds.

Q As a matter of fact in cases of violation of this excess collateral law you are entitled to sue in court and obtain the return of the excess collateral, are you not?

A If it can be had, I presume.

Q What was the date this case was filed by the City of Omaha?

A Before the time was up for filing petitions of intervention and that was perhaps about December of 1931, and maybe that went over into January a while.

Q Did you ever consider that there was ever any excess collateral transferred to the Omaha National Bank by the South Omaha Bank, by the McGurk interests?

A No; it has never been known to me.

Q You didn't know there was any such transaction?

A No; I didn't know there was any such transaction.

WITNESS EXCUSED.

F. C. RADKE

Recalled as a witness, testified as follows:

EXAMINED BY MR. WATSON:

Q Mr. Radke, what is the accredited list of newspapers?

A I have never seen it.

Q What newspaper do you publish legal notices in?

A Well, I will tell you—I have never—I never ordered the publication of any legal notice.

Q That comes under your jurisdiction, doesn't it?

A Now, when there are foreclosures and it is necessary to get service by publication or if there is a sale of assets, then there is a notice published, but that particular thing, I don't have.

Q Well, the publication of those statements in the newspapers, who sends them out?

A I think the attorney who has charge of that particular work.

Q Well, does your office dictate in what paper the notice shall be published?

A I never dictate that.

Q I didn't ask you; I said your office.

A No, I don't; I haven't seen it.

Q Do you know if anyone in your office has a so-called list of newspapers to be used for legal notices?

A I couldn't say, but there may be.

Q You don't know?

A I don't know; I never have seen it. Mr. Gartland may have; you might ask him about that.

Q By the way, you had certain objections to Mr. Oleson because of his drinking, I believe. Have you ever been informed that any attorneys working for you representing you throughout the state, have taken to drinking heavily so as to be objectionable at any time?

A Well, I think there was perhaps some little complaint.

Q Anyone that is now working in your department as an attorney?

A Oh, I think so, one.

Q Who was that?

A Oh, I don't believe I care to state that.

Q Is he still working for you?

A Oh, yes.

Q You haven't fired him?

A There was no drunkenness and there is no incompetency. I think most attorneys take it when it is opportune, but I don't think I will go into this.

Q Now, who has the duty, among all the attorneys for the receivership to set aside any preference that has been obtained by anyone in a bank before it closes?

A The first assistant who is in charge of that particular work.

Q Who is that?

A Mr. Miles.

Q Who was it before Mr. Miles?

A Mr. Barlow Nye.

Q Oh, I guess that is all, unless you can tell us where we can get more information about the accredited list of newspapers.

A Well, you might call Mr. Gartland; he may have something, I don't know. I might state here that with my particular work I hardly ever have occasion to use a newspaper for any legal publication. I believe that I outlined to you the particular thing that I have charge of as to trying cases; they don't involve such things.

WITNESS EXCUSED.

F. C. RADKE

Recalled as a witness, testified as follows:

EXAMINED BY MR. WATSON:

Q I hand you expense voucher of June 10, 1932, for the month of May, 1932. Will you please state what business of the department you were on when you made those expenditures, if you can recall?

A What particular days now, did you say?

Q There is a long trip there in which you charge mileage but no meals, and no lodging, and our question is whether or not you were engaged in a political campaign when you took that trip. We want to know your statement on that now.

A Well, it is safe to say there was no political trip, and every one of the items here is in regard to work of the receivership. There were lawsuits at those various places.

Q Can you explain why no meals or lodging were charged for those dates?

A I would say maybe I neglected to put it in and I have got something coming, perhaps, but it is safe to say there was no political candidate on any of these trips, and I may have something coming there that I just beat myself out of.

Q Who attested that voucher for you?

A Miss Mulvihill.

Q Did she work for you?

A Yes.

Q Did she spend three weeks in Omaha campaigning and drawing compensation at that time from the department?

A I think she had a vacation; she took her vacation along sometime in the fall. Every employee is given two weeks vacation each year.

Q Did you make any political speeches for that campaign during a trip through the western part of the state?

A No. That is, you mean, in 1932?

Q Yes, sir.

A No.

Q How much money did you receive from the Democratic State Central Committee in the year 1932 to make trips out over the state?

A None. I didn't make any trips at the request of the committee, and I didn't make any political trips anywhere. But it may be possible I have some money coming on this.

MR. WATSON: Did you find that Hoagland file, Mr. Luikart?

MR. LUIKART: Do you want it right away?

MR. WATSON: I would like to get it into this record before we examine those witnesses.

MR. RADKE: Mr. Gartland has just called my attention to this matter—in answer to the question there, I have had the facts re-

called to my mind by Mr. Gartland, who drove my car to these various places where we had appeal cases and we had to get certain bills of exceptions certified so that they could be filed. That is the reason that there is no hotel or meals claimed by myself.

MR. WATSON: All right—thank you.

WITNESS EXCUSED.

Exhibit 6

Report of Attorney General Spillman, 1927-1928, page 85:

BANKS, JOINT STOCK LAND BANK BONDS.

A state bank should not have in excess of twenty per cent of its surplus and capital invested in the bonds of any one joint stock land bank.

"Sep. 27, 1928

Mr. Clarence G. Bliss
Secretary
Department of Trade and Commerce
Lincoln, Nebraska
Dear Sir:

You inquire as to the amount of bills receivable issued in the way of Joint Stock Land Bank Bonds that may be carried by a state bank.

Allow me to say in answer to your question that I believe such bonds are like the notes given by any other bank or corporation insofar as the right of any state bank to make loans upon them either directly or indirectly is concerned, hence no state bank should have to exceed twenty per cent of its capital and surplus invested in the bonds of any one Joint Stock Land Bank. (See Sec. 8013, Comp. Stats. of Neb. for 1922.)

The bonds of Joint Stock Land Bank are not government bonds in the sense that Liberty Loan Bonds are, that is to say, they are not the direct obligations of the government. A Joint Stock Land Bank although it is in a sense a governmental instrumentality is only such in the same sense that a national bank is an instrumentality of the United States Government. I am returning herewith the two pamphlets inclosed with your letter.

GWA"

Exhibit 7

Mr. Robert H. Downing, August 1, 1934.
Assistant Chief
Receivership Division,
Building.

Re: Authority of receiver of insolvent bank to compromise debt owing to a bank.

Dear Sir:

You ask our opinion relative to the necessity of a court order to authorize the receiver of an insolvent bank to compromise a debt owing to the bank at less than the full amount. We believe that an order of the District Court should be obtained in every instance approving or confirming any such compromise.

In the case of judicial receiverships commenced prior to the 1933 act, the receiver is an officer of the court and has no authority except as it is expressly conferred by order of court. The order initially made when the receiver is first appointed is quoted in part in your letter

of inquiry recognizes this limitation and requires the approval of the court for any compromise of debts or claims due the bank. That part of the order provides that the receiver is authorized to "compound any and all debts and claims due said bank, subject to the approval of the Court as provided by law." The phrase "as provided by law" does not limit the requirement so as to necessitate an express requirement in the statutory law. The powers of receivers are so limited in the absence of any express statute to the contrary.

In the case of administrative receiverships, section S-1131, Compiled Statutes Supplement, 1933, is explicit that an order of court affirming the compromise is required. This is true whether the transaction requires the name of the receiver or not, if he in effect controls the transaction.

In our opinion therefore, judicial orders confirming the compromise should be had in all cases to protect the receiver from claims of dissatisfied creditors.

Yours truly,
PAUL F. GOOD,
Attorney General.

By
Assistant Attorney General.

DS:LL

Exhibit 8
"CONTRACT."

Memorandum of Agreement, made and entered into this 7th day of September, 1926, by and between R. O. Brownell, Receiver of the Security State Bank, Omaha, Nebraska, Defendant in a proceeding in the District Court of Douglas County, Nebraska wherein State of Nebraska, Ex. Rel. O. S. Spillman, Attorney General, is plaintiff, party of the first part and the reorganized Security State Bank, Omaha, Nebraska, party of the second part.

WHEREAS, the party of the first part, in the proceeding above described, has been appointed by the District Court of Douglas County, Nebraska, Receiver of the Security State Bank, Omaha, Nebraska; and

WHEREAS, all of the assets and property of the said Defendant Security State Bank, Omaha, Nebraska, have been delivered to the said party of the first part as such Receiver and are now in his custody; and

WHEREAS, it is deemed advisable by the party of the first part to sell and transfer unto the reorganized Security State Bank, party of the second part, and it is deemed advantageous by the said party of the second part, to purchase and acquire all of the assets and property formerly belonging to said Defendant, Security State Bank, Omaha, Nebraska;

NOW, THEREFORE, subject to the approval of the terms of this contract by the District Court of Douglas County, Nebraska, for and in consideration of the premises and agreements of the party of the second part herein set forth, the party of the first part agrees to sell, assign, transfer, set over and convey to the party of the second part all

of the right, title and interest of the Defendant, Security State Bank, Omaha, Nebraska, and of the party of the first part as Receiver of said Defendant bank, in and to all of the assets and property aggregating $1,090,503.87 in value as of the end of business on September 4th, 1926, described in the following schedules:

1. The Bills Receivable described in schedule hereto attached marked Schedule "A", party of the first part to waive accrued interest thereon.

2. All the Other Real Estate described in schedule hereto attached marked Exhibit "B."

3. All the Judgments as described in schedule hereto attached marked Schedule "C."

4. All the Overdrafts described in schedule hereto attached marked Schedule "D."

5. The Banking House and Furniture and Fixtures described in Schedule hereto attached marked Schedule "E."

6. All the Liberty Bonds described in schedule hereto attached marked Schedule "F."

7. "Other Assets" described in schedule hereto attached marked Schedule "G."

8. Bankers Conservation Fund as described in schedule hereto attached marked Schedule "H."

9. All the Cash, Cash Items and Balances due from Banks as described in schedule hereto attached marked Schedule "I."

The party of the second part agrees to assume the following liabilities of the Defendant Security State Bank, Omaha, Nebraska, as of the end of business on September 4th, 1926, and not any other liabilities whatsoever;

1. All liability to Depositors of the Defendant Security State Bank, Omaha, Nebraska, having preferred claims for deposit subject to check payable from the Depositors Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $462,565.54 listed in Schedule hereto attached, marked Schedule "J."

2. All liability to Depositors in the Defendant Security State Bank, Omaha, Nebraska, having preferred claims for Time Certificates of Deposit, payable from the Depositors' Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $95,661.85 listed in schedule hereto attached marked Schedule "K," party of the second part to pay accrued interest thereon according to the terms of said Certificates of Deposit.

3. All liability to depositors of the Defendant, Security State Bank, Omaha, Nebraska, having preferred claims for savings accounts, payable from the Depositors' Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $588,157.79 listed in Schedule hereto attached, marked Schedule "L." Party of the second part agrees to pay accrued interst on said savings accounts.

4. All liability to Depositors of the Defendant, Security State Bank, Omaha, Nebraska, having preferred claims for Cashier's checks payable from the Depositors' Guaranty Fund of the State of Nebraska such claims aggregating the sum of $59,785.55 listed in schedule hereto attached, marked Schedule "M."

5. All liability to Depositors of the Defendant, Security State Bank, Omaha, Nebraska, having preferred claims for certified checks payable from the Depositors' Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $706.00 listed in schedule hereto attached marked Schedule "N."

6. All liability to Depositors of the Defendant, Security State Bank, Omaha, Nebraska, having preferred claims for deposits shows as "Due to Banks," payable from the Depositors' Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $308,368.99 listed in schedule hereto attached, marked Schedule "O."

7. All liability to Depositors of the Defendant, Security State Bank, Omaha, Nebraska, having preferred claims for deposits shows as "Savers Club," payable from the Depositors' Guaranty Fund of the State of Nebraska, such claims aggregating the sum of $258.15 listed in schedule hereto attached, marked Schedule "P."

The total amount of the liabilities listed in the foregoing schedules is $1,515,503.87

LESS

The total value of the assets purchased herein.....$1,090,503.87

Leaving a balance to be paid by party of the first part as hereinafter provided of.....$ 425,000.00

The party of the second part hereby agrees to pay a bonus of $10,000.00 for the good-will, charter and business of the Defendant, Security State Bank of Omaha, Nebraska.

The party of the second part shall file a claim with the party of the first part for an amount equal to the total deposit liability assumed by the party of the second part, to-wit, $1,515,503.87, said claim to be payable from the Depositors' Guaranty Fund of the State of Nebraska, and said party of the first part shall off-set against said claim an amount equal to the total value of the assets purchased by the party of the second part, to-wit, $1,090,503.87, and said party of the first part shall also off-set against said claim of the party of the second part the said bonus of $10,000.00 which party of the second part has agreed to pay, levying a balance due on said $1,515,503.87 claim of $415,000.00, it being agreed that the amounts set forth in the schedules hereto attached submitted by party of the first part shall be accepted by party of the second part as the basis of said claim and offset against said claim.

The party of the first part agrees, when the claim against the Depositors' Guaranty Fund of the State of Nebraska, is filed with him as hereinbefore set forth, to apply for permission to issue Receiver's certificates, in said amount of $415,000.00, said certificates to be issued and negotiated not later than November 1, 1926, and that when said cer-

tificates have been negotiated the party of the first part shall pay to the party of the second part from the proceeds thereof, not later than November 1, 1926, the said sum of $415,000.00 without interest to November 1st, 1926.

If the party of the first part shall be unable, from the proceeds of the sale of the Receiver's certificates, to meet the obligations herein incurred, by November 1, 1926, he shall then make prompt application to the District Court of Douglas County, Nebraska, for permission to draw upon the Depositors' Guaranty Fund of the State of Nebraska for any deficiency.

Upon the Court entering an Order in accordance with the Petition filed in the District Court of Douglas County, Nebraska, for the approval of the sale of the assets by the Receiver, and upon the Court approving the sale thereof, the party of the second part shall immediately be put into possession of the Bank and all of its assets.

Party of the first part agrees, upon Order of the District Court of Douglas County, Nebraska, to issue from the stock book of the Defendant, Security State Bank, Omaha, Nebraska, certificates of stock to John S. McGurk, or his assigns, or persons designated by him, such purchasers to be and become the only lawfully constituted stockholders of the reorganized Security State Bank, Omaha, Nebraska. Party of the first part further agrees that the Court shall cancel the outstanding shares of capital stock of the Defendant, Security State Bank, Omaha, Nebraska, it being understood that the amount of the shares of capital stock to be reissued shall be $100,000.00.

The party of the second part shall hold the assets and property of the Defendant, Security State Bank, Omaha, Nebraska, purchased and transferred to it under the terms of this contract, free from any lien of claims, except such as the party of the second has herein agreed to assume, or any liability which existed at or prior to the time said bank was declared insolvent and placed in Receivership.

The Receiver's certificates which may be issued as provided herein shall not be a lien or held as a claim against the assets of the Defendant or reorganized Security State Bank, Omaha, Nebraska.

In Witness Whereof, the party of the first part has hereunto set his hand, and the party of the second part has caused this contract to be executed by its President.

Witnesses:

C. S. Stoll.

R. O. Brownell,
Receiver, Security State Bank,
Omaha, Nebraska,
Party of the First Part.

John S. McGurk,
President, Security State Bank,
Omaha, Nebraska,
Party of the Second Part.

Exhibit 25

Number 393

THE STATE BANK OF STELLA

Established 1886

CAPITAL $50,000.00 SURPLUS $10,000.00

Directors
D. S. Hinds
E. W. James
C. L. Johnson
R. A. Tynan
Joe Wagner

Officers
R. A. Tynan, Pres.
Earl Wagner, Cashier
Edna Hoppe, Asst. Cash.

Dec. 13th, 1933

Mr. E. H. Luikart,
Lincoln, Neb.

Dear Ed:—

I'm hoping and planning to spend Sunday in Lincoln, arriving late Saturday afternoon. Shall try to get in touch with you later on by 'phone as would like to go over some matters with you before returning here on Monday. Will not leave Lincoln until about eleven o'clock that morning so if you would rather not give me a half hour Sunday, perhaps you can do so Monday morning early. If you wish to designate a time please advise me either here or care of the Cornhusker.

Everything very quiet here. Looks as tho plenty of stock will be available to anyone wishing to take it on. People certainly are off bank stock as an investment and who can blame them? But it is the time to "get in" I believe and even tho one must take more than he feels he should it may be the very best thing after all. Hope you will decide to come in for some more as there will be but few of us left after the "clean up."

Faithfully,

W. H. RHODES.

Exhibit 26

CERTIFICATION

As required by Section 1, Paragraph B.

Washington Resolution.

We, W. H. Rhodes, Assistant-to-the-President, and Earl Wagner, Cashier, of the State Bank of Stella, Nebraska, do hereby certify that on the 10th day of January, 1934, the sum of twenty-five thousand ($25,000.00) dollars, in cash, was paid to the State Bank of Stella as a contribution by its stockholders; the same has been added to the capital structure of the bank, and the obligations of the Bank on account of such payment is fully subordinated to the rights and claims of the owners of its Preferred Stock, depositors, and other creditors.

Signed at Stella, Nebraska, this 2nd day of February, 1934.

W. H. Rhodes
Assistant-to-the-President
Earl Wagner
Cashier.

Subscribed and sworn to before me,....., a Notary Public in and for Richardson County, Nebraska, this..... day of February, 1934.

.....
Notary Public

My commission expires the.....day of.....19....

Exhibit 27

I, E. H. Luikart, being the duly constituted authority having supervision of the State Bank of Stella, Nebraska, a state bank organized and existing under and by virtue of the laws of the State of Nebraska, and having its principal place of business at Stella, County of Richardson, State of Nebraska, approve the plan of recapitalization of said bank by issuing preferred stock in the amount of $20,000.00 and the reduction of the capital stock from $50,000.00 to $25,000.00, and have further approved writing down of elimination assets by the levy of a 50% assessment on the old stock, of which a sufficient amount was paid to eliminate all objectionable assets of this bank.

Witness my hand and official seal at Lincoln, Nebraska, this 31st day of January, 1934.

E. H. LUIKART
Superintendent of Banks.

Exhibit 28

May 17, 1934.

Mr. G. F. Roetzel
Supervising Examiner
Federal Deposit Insurance Corporation
Kansas City, Mo.

Dear Mr. Roetzel:

Re: State Bank of Stella, Stella, Nebraska.

Your letter of the 14th instant has brought to my mind the fact that the situation at Stella has been drifting. It is one that has given me considerable concern. I have been home in bed for the past ten days with arthritis in both my feet and am unable to work. I have a telephone at my bedside and immediately upon receipt of your letter called up the cashier of the State Bank of Stella, Mr. Ray Wagner, and told him I wanted to see him at my home at the earliest possible date. He came in today and we had a conference at 4:30, which lasted for an hour and a half.

I believe you are aware of the fact that W. H. Rhodes by schemes, threats and innuendoes induced a great number of the stockholders in this bank not to pay this assessment of 50% to the extent of $16,250. He paid this assessment by going to the Richardson County State Bank, borrowing a like amount on his personal note and placed the funds to the credit of the State Bank of Stella, which was used for the payment of assessments.

All of this was unknown to the officers of the bank. They assumed that he had funds of his own with which to handle the transaction.

When the preferred stock loan of $20,000 was paid by the RFC, it seems that the amount was deposited in some Kansas City bank and with this he paid off his note at Falls City, leaving but $3,750 for the bank's capital.

Shortly after this transaction both our examiners and your examiner made an examination of this bank, developing the situation as stated above. When I learned these facts Mr. Rhodes was immediately discharged and called upon to transfer the preferred stock certificate in blank, which transfer is in the possession of the State Bank of Stella.

The directors then proceeded to collect the 50% assessment and were successful in securing $10,000, but the bank is still $6,250 short of its preferred stock assessment. I advised Mr. Wagner either to have the officers of the bank collect the balance of the assessment or sell stock to cover the shortage and told him that if this were not possible, in my judgment, the Richardson County Bank of Falls City could be held liable for the shortage, for the reason that we have had a case similar to this in every detail, where the officers of a state bank of Nebraska borrowed funds personally from the Stock Yards National of Omaha and afterward paid this note out of the undivided profits of their bank, the Citizens State Bank of Lincoln.

I further told Mr. Wagner to call on the manager of the RFC at Omaha and explain the situation in detail. This he agreed to do.

If and when these funds can be restored, the bank will be in a perfectly sound condition, but I think it will be wise for the FDIC, the RFC and the Banking Department to join hands in pressing the matter to a prompt conclusion.

Yours very truly,

Superintendent of Banks.

EHL:NH

Exhibit 29

Number 393

THE STATE BANK OF STELLA

Established 1886

CAPITAL $50,000.00 SURPLUS $10,500.00

STELLA, NEBRASKA

Directors	Officers
D. S. Hinds	R. A. Tynan, Pres.
E. W. James	Earl Wagner, Cashier
C. L. Johnson	Edna Hoppe, Asst. Cash.
R. A. Tynan	
Joe Wagner	

—Copy—

State of Nebraska

January 22, 1934

Mr. W. H. Rhodes
State Bank of Stella
Stella, Nebraska

Dear Mr. Rhodes:

I am enclosing herewith Certificate No. 205 for 115 shares of the State Bank of Stella stock for cancellation. In lieu of this stock will you please make out 7½ shares for G. A. Luikart and send the same to me, together with a memorandum of agreement that the preferred stock, after the government has been paid, will be divided in such a manner so that he will receive shares of stock and that Marion H. Luikart will receive a like amount, or a total of 50 shares.

I wish to have a written memorandum relative to this so that it will be definitely understood. In this memorandum you may include both the children, setting out the shares they are to receive each, and sign as a bank official.

Yours very truly,

EHL:KF
Encl.
Ed.

E. H. Luikart.

You forgot to endorse the cf. Been about three-fourths laid up with cold but will write you later.

Faithfully,
W. H. R.

EXHIBIT 11
Minor S. Bacon, Notary Public.

Exhibit 30

State BANK OF Stella, NEBRASKA.

LIST OF STOCKHOLDERS AND DIRECTORS

Indicated Director by placing "D" in column following Address.

No. of Shares Owned	NAME	ADDRESS	Liability as Payers (Firm or Individual) Including Overdrafts	Liability as Indorsers or Guarantors	Occupation
20	D. S. Hinds	Stella, Nebr.	D 200.00	0	Farmer
31	E. W. James	"	D 0	0	Dentist
36	C. L. Johnson	"	D6250.00	3000.00	Farmer
110	R. A. Tynan	"	D 0	0	President
20	Joe Wagner	"	D 0	0	Stockman
5	Hattie Higgins	"	0	0	H-wife
22	Gertrude Hinds	"	0	0	H-wife
20	A. R. McMullen	"	1900.00	0	Farmer
30	Eleanor McMullen	"	0	0	H-wife
10	Luela Nombalais	"	0	0	H-wife
20	Earl Wagner	"	0	0	Cashier
15	J. F. Weddle	"	1700.00	0	Mdse-Hdw
2	M. M. Weddle	"	0	0	Farmer
2	Ella Mae Winfrey	"	0	0	H-wife

6	Edith M. Clark	Kansas City, Mo.	0	0	?
4	I. E. Gaskill	do	0	0	Stockman
14	Lucile (Harris) Gaskill	do	0	0	H-wife
15	Hazel Baum	Indianapolis, Ind.	0	0	Widow
4	Burt L. Harris	Yakima, Wash.	0	0	Rancher
14	Olive M. (Harris) Helton	do			H-wife
9	Effie M. Hogrefe	?			Widow
15	E. H. Luikart	Lincoln			Supt.
10	F. H. Johnson	Verdon, Nebr.	650.00	0	Farmer
5	F. H. Martin	Auburn, Nebr.	0	0	Mdse.
43	W. E. Pritts	Omaha, Nebr.	1900.00	0	Retired
4	L. L. Platt	Kansas City, Mo.	0	0	?
14	J. H. Brey	Stella, Nebr.	970.00	0	Vet.

C1. Johnson-co-signer on $3,000—above.

Total Shares $	Par Value each. Totals	$16,570.00
By-laws provided	Total as indorser	$
for (5) Directors.	Less Duplications	$
Give number. 5	Net-Total	$
	50% of Pd-up C. & S.	$30,250.00
	Statutory Excess	$

No. of last certificates issued 212 Are outstanding stock certificates in balance? yes

Are surrendered certificates properly assigned, witnessed and cancelled, and pasted to stubs in stock certificate book? yes—assignments not checked.

Are proper receipts taken, and signed for on stubs of certificate book, or are receipts evidenced by letter or receipt attached to stubs? yes

Are there any certificates not delivered? none

If bank owns any of its own stock, report how long held and how acquired none

Is a correct list of stockholders of this bank, giving addresses, no. of shares held, and amount of paid-up Capital represented thereby, kept where all stockholders and creditors may have ready access to it? Call Report in part

Are any stock certificates signed in blank? none

TRANSFER OF STOCK SINCE LAST EXAMINATION

Certificate Cancelled			New Certificate Issued		
Ctf. No.	NAME AND ADDRESS	Shares	Ctf. No.	NAME AND ADDRESS	Shares
198	Harry E. Clark	4	212	L. L. Platt, K. C., Mo.	4

Exhibit 31

THE STATE BANK OF STELLA

Established 1886

CAPITAL $50,000.00 SURPLUS $10,500.00

STELLA, NEBRASKA

Directors
D. S. Hinds
E. W. James
C. L. Johnson
R. A. Tynan
Joe Wagner

Officers
R. A. Tynan, Pres.
Earl Wagner, Cashier
Edna Hoppe, Asst. Cash.

February 16th, 1934.

Mr. E. H. Luikart,
Lincoln, Nebr.

My Dear Ed:

One hardly knows where to begin, there is so much I'd like to tell you of. To begin with this is about the busiest little place one can imagine, but we are gradually bringing order out of what was the most disorderly method of doing business. We no longer open at 7:30 in the morning, remaining open until 6:00 at night. We now open at 9, close for an hour at noon, re-open at 1 and close at 4. Thus we are able to do our work and have it right and not have to come back at night in order to balance. We have a cash book and will have a regular bills receivable register. The old management never made use of debit and credit tickets, entries of all sorts being made in all kinds of old books. We shall in time have a clear cut system which anyone can easily enuf understand.

We feel much encouraged over the outlook as new accounts are being opened and deposits gradually increasing. We have made up the loss of the 25M assessment which was on deposit a month or so and have the county treasurer paid off. We have declined his tender of more deposits on the old basis, telling him we would not give a bond or pay extra for the funds. If he wants to do as other depositors do all right, otherwise we shall continue to refuse county money. Deposits are 120M, a year ago they were 113M, 18M of which was county money. Loans are 85M against 137M one year ago, and reserve is 32%. We have 22M as mortgage loans but am working to reduce this item to as near zero as possible. We are taking on all good loans offered us and carrying some 6 or 7M corn loans.

So far as one can tell the feeling toward the bank is very good. The substantial fellows understand it all and are for us. We elected Dr. James president, Dan Hinds vice-president, Earl cashier and myself assistant to the president. We put Dr. Brey, a good man, on the board in place of C. L. Johnson but have not filled Tynan's place. Thot we might be able to interest Frank Shubert but he wants to get rid of any banking responsibility. I was over to see him but he don't like the idea of turning his deposits to us and liquidating his capital. He will sell out but wants a bonus and the business is not worth it. He does not want to increase his capital stock in order to join the F.D.I.C. I am to have another talk with him soon. Perhaps you may have something to suggest in this connection. Believe we could retain possibly 50% of his deposit were he to turn them to us, but the business south and

east of Shubert I figure would mostly go to Falls City. Still we are getting a few new accounts from that territory and presume more may be expected. We are doing some advertising in the local paper, change the ad each week and surely it is doing us some good.

When in Lincoln last I gave you the stock line up, the same as is shown in our final application to R.F.C. You have been so mighty good to me that I feel under great obligations to you. Mrs. Rhodes and I have talked matters over at length and we in turn want to do something by way of showing our appreciation. We should like to have you accept 35 shares of the common stock which as you know is paid for by reason of the assessment I put up. This with the 15 shares you now hold will make 50 shares, and when converted into preferred will be 25 shares, which can be divided equally between Gordon and Marion. Now we do not want you to look upon this as being in any manner intended as a bribe. I think you know me well enuf to know I would no more think of offering such than I would of accepting one. We do feel a very deep sense of gratitude to you for the opportunity you have given me and if hard work and fidelity to my job will accomplish anything you will never have cause to regret putting me here. Everything appears to be moving along so nicely I do feel much encouraged, tho Ed, the thot of having to LIVE here is not altogether a happy one. I've not had the courage to say to Mrs. Rhodes "you must come to Stella." Later on in the summer after she has returned from her visit to our son in Illinois, who as I believe I told you, expects a first born the last of next month, we shall make arrangements either to live here or in Falls City. As you know Stella does not have a water system and there is no such thing as all of water one wants in any home. It is a very great drawback to the town and the number of vacant houses is alarming. But the good farming country is all about us and if we can keep them coming for a few years we can at least hope to lay by a little for a rainy day.

Enclosed you will find a statement of Dec. 31st and one of date. We really should have levied a 75% assessment at least, as our undivided profit account is now on the wrong side of the ledger. But this will not be for long, because monies coming in from the charged off paper will soon take care of it. After going over our 200 acre farm the second and third time, carefully going over every acre of it, I've made up my mind the land is worth $100.00 an acre, in which Dr. James, a mighty good judge of land and very conservative, fully concurs. We should like therefore to carry it on our books at 4 or 5M at least for the time being. Then the house and lot acquired from Chas. Johnson, and located in a very good part of Kansas City, should be carried at about the same amount. In time it is entirely possible we will be able to salvage enuf from this property to make up the entire Johnson charge off of some 10m. Much of our charged off paper will be a total loss but I do believe we shall in time recover enuf to more than pay off the R.F.C., and perhaps be able to do so before the close of the

year. Things will have to go into reverse mighty badly if we do not do so.

We have, of course, given up our room at the Cornhusker and shall not be in Lincoln over week ends as was my custom. If, however, in the course of the next month or so you should like to see me, just send me the summons and I'll be on hand, preferably over some week end. Next Sunday I hope to spend in Omaha with the family for Mrs. Rhodes will then be leaving for Illinois. I mean Sunday the 25th, as she is to reach Bud's by March 1st.

I trust this much delayed letter will be received in the spirit in which it is written, namely of appreciation and gratitude for what has been done. Of all things I do not wish to make any mistakes and shall always be glad to have your suggestions for your helpfulness means everything to me. With every good wish to you and yours, I am

Faithfully,
W. H. Rhodes.

Exhibit 32

Directors
State Bank of Stella,
Stella, Nebraska.

November 21, 1933.

Gentlemen:

Following a further study of the report of the examination of your bank as of September 19, 1933 and further taking into account the lack of progress and improvement shown by the bank during the past four years, the Department now asks the Board of Directors to meet promptly and put into effect the following program:

1. Terminate the salary of Mr. Tynan as of December 1, 1933. Pass a resolution instructing Mr. Tynan to perform no further executive functions and particularly to make no contacts with borrowers who are being pressed for payment. Should any of these borrowers seek out Mr. Tynan he is to refer them to Mr. Rhodes.

2. No new loans are to be made unless they have the approval of Mr. Rhodes and the Board of Directors.

Please furnish the Department certified copy of the resolutions and orders of the Board of Directors putting the above program into effect.

Yours very truly,
DEPARTMENT OF BANKING
Deputy Superintendent.

GWW-IK

Exhibit 33

Number 393

THE STATE BANK OF STELLA
Established 1886
CAPITAL $50,000.00 SURPLUS $10,500.00
STELLA, NEBRASKA

Directors
D. S. Hinds
E. W. James
C. L. Johnson
R. A. Tynan
Joe Wagner

Officers
R. A. Tynan, Pres.
Earl Wagner, Cashier
Edna Hoppe, Ass't Cash.

Dec. 28th, 1933

Mr. E. H. Luikart, Secretary,
Lincoln, Nebr.
My dear Ed:

The shareholders met today and adopted the R. F. C. resolutions without a single dissenting vote. 473 shares were represented, counting the 88 shares already surrendered and your 15. Gaskill of K-C was as peaceful as could be and in fact made the motion to acquiesce. But he would have tried to make trouble had he felt certain of any support. I believe a few of the "die hards" encouraged him somewhat but not to a sufficient extent and he evidently concluded it best not to start anything, for I was ready for him on the ground his actions would imperil the bank's position. Before the meeting Chas. L. Johnson was for closing the bank until I told him that in such an event the directors would be likely to find the State on their backs for dereliction of duty. That shut him up and he will turn in his stock.

93 shares have been turned in, 90 more are to come sure, 160 are still doubtful and 157 shares are being retained. The doubtful ones are Tynan and McMullen, and believe yet they will both let go. Tynan has held on hoping he could find some way of getting back into the management but I've told him neither the Department nor the R. F. C. would stand for it.

It is no time for placing stock with new men so shall just do the best we can for the present. As friends are made among the customers some shares can be placed later I'm certain. Will be in Lincoln Sunday and if you can and wish to see me for half an hour for more details, just let me know. It's hard to write either you or George Woods without a personal touch, you are such good friends. Please show him this letter. Best wishes and A Happy New Year to each of you.

Faithfully,
W. H. Rhodes

Exhibit 34

Department of Banking
E. H. Luikart
Superintendent

STATE OF NEBRASKA
CHARLES W. BRYAN, GOVERNOR
LINCOLN

MEMORANDUM

April 3, 1934.

State Bank of Stella,
Stella, Nebraska.

Conference April 2, 1934.

Present: For Bank—D. S. Hinds
Joe Wagner
Dr. E. W. James
Dr. J. H. Brey
W. H. Rhodes

For Department—August H. Basler
E. H. Luikart
F. C. Radke
M. N. Foster

The Audit of Mr. Basler made at the State Bank of Stella with respect to the disposition of funds obtained from the Reconstruction Finance Corporation to provide for preferred stock in an amount of $20,000.00 together with the 50% assessment to have been paid in on the orginal capital stock of the State Bank of Stella and by the reduction in the original capital from $50,000.00 to $25,000.00 shows that $16,250.00 of the $20,000.00 obtained from the Reconstruction Finance Corporation as a loan on preferred stock had been used by Mr. Rhodes to retire his personal obligation given to the Richardson County Bank at Falls City, said obligation in that bank having been created by Mr. Rhodes ostensibly for the purpose of paying the 50% assessment upon the number of shares of stock in the State Bank of Stella, which he represented to have taken over from old stockholders who could not or did not care to pay the assessment and remain in the new set up. The records clearly show that the State Bank of Stella is short the amount of $16,250.00 of having sufficient funds to remove all the assets set up for elimination and still show capital stock in the amount of $20,000.00 preferred and $5,000.00 common and approximately $16,000.00 surplus and undivided profits as set out in their original application to the Reconstruction Finance Corporation for a loan on preferred stock. This audit also shows that the assessment was paid on all of the outstanding stock by the present owners of this common stock exclusive of that transferred to and issued in the name of W. H. Rhodes.

The evidence as furnished by the auditor's report is conclusive that $16,250.00 was improperly used and with the testimony also given by the other representatives of the bank, the action on the part of Mr. Rhodes apparently was premeditated.

The conference resulted in the request upon Mr. Rhodes for his resignation as Assistant to the President and for an assignment from him on the common stock now standing in his name, both requests being complied with by Mr. Rhodes, who tendered his resignation to take effect immediately and assigned to them his interest in the bank. The directors are to proceed on the reallocation of the shares of stock standing in the name of Mr. Rhodes, the new owners to pay in the

assessment and become owners of his proportionate number of shares. In this reallocation sufficient number of shareholders are to acquire the required number of shares of common stock necessary to qualify as a director. The directors are to report to this Department within a week of what progress they are making along these lines.

Exhibit 35

July 24, 1931

Mr. W. R. Scribner
Kearney, Nebraska

Dear Ray:

I am today writing Mr. Carl Stoll of Lincoln asking him to appear before Mr. Luikart to see what action he can get on your application for a position. I believe if they have something open, you will have no trouble in landing it. I will also talk to Mr. Bob Drake of Omaha, who is a very close personal friend of Luikart and ask Mr. Drake to telephone Luikart to pay some particular and specific attention to your application.

Just at the present time, I am not financially easy enough to take up the note you write about. I trust Fred Wise will be able to furnish the money you want.

If you do not get some word from Luikart very soon, please write me again.

Yours very truly,
President.

JSM/W

Exhibit 36

August 15th, 1932.

Mr. W. R. Scribner,
Winside,
Nebr.

WISNER

Dear Mr. Scribner:

We are contemplating relieving Mr. H. M. Doty as Assistant to the Receiver in charge of the Wisner State Bank and place you in charge of this bank, along with the one at Winside. Mr. Carl Dvoracek will probably be at Wisner Wednesday of this week for the purpose of checking out Mr. Doty, and we wish you would arrange to be at Wisner on that date so that you can give Mr. Doty a receipt for the assets which have been in his custody.

With the addition of Wisner to your activities, you will still make Winside your headquarters. While you are at Wisner you will be entitled to charge up whatever expense you have had at that place, such as meals and lodging if you find it necessary to stay there over night. And whatever auto mileage you incur in looking after the affairs of this additional trust.

Yours very truly,
Chief Receivership
Division.

CGS/FA

Exhibit 37

AFFIDAVIT

THE STATE OF NEBRASKA, } ss.
Lancaster County }

W. E. Barkley being first duly sworn deposes and says:

I am President of The Lincoln Joint Stock Land Bank of Lincoln, Nebraska, and have examined the Bank's stock certificates record from January 1, 1930 to October 15, 1935, and find the following to be true:

E. H. Luikart	is at present a stockholder
Grace C and/or	
George W. Woods	hold stock issued as stated
C. G. Stoll	was never a stockholder
R. H. Downing	was never a stockholder
Tracy Radke	was never a stockholder
Barlow Nye	was never a stockholder
C. A. Sorensen	is at present a stockholder
Paul Good	owned stock between November 10, 1922 and July 27, 1932
Gordon Luikart	was never a stockholder

Further, affiant saith not.

W. E. Barkley

Subscribed and sworn to before me this 15th day of October, 1935.

Cecile Snapp
Notary Public

(NOTARIAL SEAL)
Commission Expires May 8, 1941.

Exhibit 38

January 21, 1931

Nebraska Bankers Association,
Omaha,
Nebraska.

DENTON

Gentlemen:

We are enclosing checks in payment of Premiums on bonds, as follows:

Premiums on bonds for C. I. Parker, receiver,

State Bank of Clearwater,	$25.00
Enola State Bank,	37.50

Premiums on bond for C. J. Boucher, employee of Department, prorated among the following banks,

Nebraska State Bank, Milford,	$8.33
Merchants Bank, Union,	8.33
Denton State Bank,	8.34

Premium on bond for Felix Jelinek, employee of Department, prorated among the following banks,

Security State Bank, Creighton $12.50
Winnetoon, 12.50

Premium on bond of Kenneth A. Tool, employee of Department, pro-rated among the following banks,

Waco State Bank, $8.33
State Bank of Touhy, 8.34
Nebraska State Bank, Valparaiso 8.33
First Bank of Ulysses, Ulysses,
R. O. Brownell, receiver. $25.00
First Bank of Miller, Miller,
Albert H. Bliss, Ass't Receiver, $12.50

Kindly receipt the enclosed statements, and return to this office for our files.

Yours very truly,

Exhibit 39

June 10th, 1931

Nebr. Bankers Ass'n,
Omaha, Nebr.

Gentlemen:

We are enclosing check in payment of premium on bonds, for C. G. Bliss as follows:

Malcolm State Bank $ 2.50
Frontier Co. Bank, Stockville, 12.50
Ponca Valley St. Bank, Monowi, 25.00
State Bank, Lynch, 10.00
Denton State Bank, 37.50
Western State Bank, 10.00
Brady State Bank, 2.50

The following are checks, in payment of premium on bonds for Geo. I. Parker:

Sec. State Bank, Wakefield, $14.15
Dixon State Bank, 3.98

Premium on bond for W. D. Hartwell:

State Bank of Niobrara, $25.00

Premium on bond for A. H. Basler:

Administration Funds, $37.50

Kindly send us receipted statements for our files, and oblige

Yours very truly,
Chief Receivership
Division

ED

Dept. of Trade & Commerce
Lincoln.

OMAHA
June 5, 1931.

To NEBRASKA BANKERS ASSOCIATION Dr.
420 Farnam Building, Omaha, Nebraska

Prem. for Natl. Surety Co. bond—C. G. Bliss, Rec. Denton St. Bk., due 7/21 .....$37.50

(PAID June 11, 1931)
(Nebraska Bankers)
(Association Omaha.)

Exhibit 40

Paul E. Walsh, Pres. Wm. J. Hayes, Vice Pres.
Anton J. Tusa, Vice Pres. Earl O. Johnson, Sec'y.

WALSH BROS. CO.
Incorporated
DEPENDABLE INSURANCE
330-335 City National Bank Building
Telephone ATlantic 0532
OMAHA, NEBR.

Mr. E. H. Luikart,
State Capitol Bldg.,
Lincoln, Nebraska.

August 29, 1931.

Dear Mr. Luikart:

Find enclosed bond in the amount of $200,000 as per instructions of Mr. Stull when he was in Omaha Saturday morning. We are also enclosing an application for your signature and have x'd out all the unimportant parts and will ask that you complete the balance and return same at your early convenience.

The bonding company would also ask that you include with the application, a copy of the court order designating the depository banks that the receiver will use in depositing the funds.

We understand how you wish this bond divided and will comply with your request in every detail when instructions are received.

We want to thank you again for this nice business and the compliment of permitting our office to write it.

Yours very truly,

Walsh Brothers Company,
By Paul E. Walsh.

PEW/ECR

Exhibit 41

Walsh Bros. Co.,
City National Bank Bldg.,
Omaha, Nebr.

August 31st, 1931.

SOUTH OMAHA STATE

Gentlemen:

We are enclosing herewith, application of Mr. Luikart for his bond as receiver of the South Omaha State Bank. Check in payment of the premium on this bond will be sent you in a few days.

Yours very truly,

CGS/FA
Enc

Chief Receivership Division

Exhibit 42

ANTON J. TUSA
Associate
WALSH BROS. CO.
Dependable Insurance.
330-335 City National Bank Building
Telephone ATlantic 0532
OMAHA, NEB.

August 5, 1932

Mr. E. H. Luikart,
State Capitol,
Lincoln, Nebraska.

Dear Mr. Luikart:

On returning to Omaha, and talking to Mr. Bock of the Fidelity & Deposit Bonding Company, I find that the renewal rate on the South Omaha State Bank would be $2.50 per a thousand. Therefore, one hundred thousand would be $250.00. I am writing you this because the premium on these bonds has been raised to $5.00 a thousand, but on all renewal bonds the old rate applies.

I would appreciate it very much if you could see your way clear to give me personally all the commission on this bond, so I can apply it on the reduction of the $133.00 deficit incurred in the last primary campaign. The commission on the $250.00 premium would be $75.00. However, this is just my suggestion. I leave it to you to decide which is the best way.

Thanking you for all past favors, I am

Yours very truly,

A. J. TUSA

AJT:EG

Exhibit 43

Fidelity Deposit Co. of Md.,
City National Bank Bldg.,
Omaha, Nebr.

August 12th, 1932.

SOUTH OMAHA

Gentlemen:

We are enclosing herewith, certified copy of order reducing the bond of E. H. Luikart as Receiver of the South Omaha State Bank, Omaha, Nebraska, from $200,000.00 to $75,000.00.

The commission on this bond last year was divided into three parts. This year we wish to have the entire commission paid to Mr. Anton J. Tusa, who is employed with Walsh Bros. Co. of your city.

We are enclosing herewith, check for $187.50 in payment of the premium on the reduced amount of this bond and would appreciate it if you will send the commission check direct to Mr. Tusa, who has his office in the City National Bank Building at Omaha.

Yours very truly,

Chief Receivership Division.

CGS/Fa
Enc
CC to Anton J. Tusa, City Natl. Bk. Bldg., Omaha.

Exhibit 44

Joel Rathbone Vice Chairman E. A. St. John Vice Chairman
Wm. B. Joyce Chairman
E. M. Allen President

NATIONAL SURETY COMPANY
NEW YORK

Omaha, Nebraska,
September 19, 1931.

Mr. C. G. Stoll,
Chief Receivership Division,
Department of Trade and Commerce
Capitol Bldg.
Lincoln, Nebraska.

Dear Mr. Stoll:

We have heretofore forwarded to you bond on behalf of George E. Hall, assistant receiver in charge of the State Bank of Omaha, in the amount of $50,000 and A. J. Barak, assistant receiver in charge of the South Omaha State Bank in the amount of $25,000.

This will acknowledge your recent letter in which you ask that these bonds be credited to the account of Agent Cowton of Grand Island, who will distribute the commission. We presume, in this connection that you will remit direct to us, and we will do the needful as in the previous cases.

Yours very truly,

Fred Liles
FRED LILES, MANAGER.

FL*MS

(Stoll They have not yet sent me the commissions on the State Bk of Omaha bond

E. H. L.

September 18th, 1931

National Surety Co.,
Omaha,
Nebr.

Gentlemen:

Referring to the increase in the bonds of George E. Hall and A. J. Barak, as assistant receivers, we would like to have the commission on these bonds credited to George Cowton at Grand Island, Nebraska, who will share this commission with Callie E. Farnsworth of Grand Island.

Yours very truly,
Chief Receivership
Division.

CGS/FA
CC sent to Geo. Cowton and Callie E. Farnsworth of Grand Island.

NATIONAL SURETY COMPANY
NEW YORK

Omaha, Nebraska
9/15/31

Mr. C. G. Stoll,
Chief Receivership Division,
Lincoln, Nebr.
Dear Sir:—

RE: A. J. Barak and Geo. E. Hall

We beg to acknowledge receipt of yours of the 14th inst., asking us to increase the above bonds.

This matter is having our attention and bonds will go forth at an early date.

Very truly yours
Fred Liles
Manager

Received Sep 16 1931 Dept. Trade & Commerce Receivership Division

September 14th, 1931

National Surety Co.,
Omaha, Nebr.

Gentlemen:

We wish to increase the bond of Geo. E. Hall, as Assistant to the Receiver, from $15,000.00 to $50,000.00 and the bond of A. J. Barak, Assistant to the Receiver, from $10,000.00 to $25,000.00. Mr. Hall is in charge of the State Bank of Omaha and we ask that you arrange for execution of the bond by Mr. Hall and also a new application for the increased amount.

Mr. Barak is in charge of the South Omaha State Bank and we wish you would arrange this bond direct with Mr. Barak, sending the two executed bonds to this office.

Yours very truly,
Chief Receivership Division

CGS/FA

Exhibit 45

Nov.	4–33	Lincoln to Omaha & Return	3.00
		Dinner (2)	1.35
"	5	Breakfast Omaha	.60
		Lunch	.85
		Lincoln to Sidney-Pullman	19.00
		Dinner Diner	1.00
		Telephone	.65
"	6	Breakfast	.60
		Lunch Scottsbluff (3)	1.30
		Dinner	.75
		Hotel Scottsbluff	2.50
"	7	Scottsbluff to Casper	6.17

		Breakfast	.55
		Lunch	.60
		Dinner	.75
"	8	Breakfast	.60
		Lunch	.50
		Dinner	.75
		Hotel Casper	1.50
"	14	Breakfast Casper	.60
		Lunch	.55
		Dinner	.75
		R. R. fare Casper to Lincoln	28.43
"	15	Breakfast Diner	.80
		Dinner Diner	1.25
		Hotel Casper	1.50
			76.90

Exhibit 45-A

All vouchers must be fully itemized and every item written on this voucher. Receipts for all cash expenditures must be attached to this voucher. All accounts must be sworn to before an officer using a seal.

STATE OF NEBRASKA
EXPENSE VOUCHER—DUPLICATE

TO E. H. Luikart DR. MONTH OF November 1933
Supt. of Banks BUREAU OF DEPARTMENT OF Banking

Date Mo.	Day	Particulars	R. R. Trans.	Allowance	Lodging	T & T Postage	Total
Nov.	4	Lincoln to Omaha & Return Auto	3.00	1.35			4.35
	5	Lincoln to Sidney (Pullman)	19.00	2.45		.65	22.10
	6	Scottsbluff		2.65	2.50		5.15
	7	Scottsbluff to Casper	6.17	1.90			8.07
	8			1.85	1.50		3.35
	14	Casper to Lincoln	28.43	1.90	1.50		31.83
	15	(On Diner)		2.05			2.05
			56.60	14.15	5.50	.65	76.90

APPROVED
C. G. S.
E. H. Luikart
Secretary

Paid Nov. 25, 1933, Check No. 4805
76.90

Exhibit 45-A

THE STATE OF NEBRASKA, } ss.
Lancaster County }

I, E. H. Luikart of Lincoln, Nebraska, solemnly swear that the above account and voucher is a true, correct and complete statement of the account of myself for expenditures made for the State of Nebraska, as therein recited, and that the charges therein made are the legal, just and usual charge for said expenses, and that said bill or any part thereof, has not been paid heretofore by the State, but that the same is now wholly due and unpaid and that I am the party signing said voucher, and that I am fully conversant with the items charged herein, and that in all manner and things this is a true, just and correct charge and item of indebtedness against the State of Nebraska.

E. H. Luikart
Name of person making affidavit

Subscribed in my presence and sworn to before me this 22 day of November, 1933.

Theola William
Notary Public

(SEAL)

Commission Ex. Sept. 18, 1937

I hereby certify that the places indicated by the person whose name appears in the above correctly represents the places visited and services rendered for the State of Nebraska, as shown by certified time records on file and that such person traveled on the business and for the benefit of the State of Nebraska pursuant to proper authority and that the person is entitled to the amount set out herein for expense incurred by him during the period.

.....Approved .....Date.....19...
Chief of Bureau Head of Department

I hereby certify that the claim specified herein is just and correct, and is for articles received; services rendered or amounts expended for the State of Nebraska and that the quality of the articles received, or service rendered was as ordered.

.....
Governor

By.....
State Tax Commissioner

EXAMINED AND ADJUSTED, $ .....
State Auditor.

By.....
Deputy

APPROVED:
.....
Secretary of State.

By.....
Deputy

Exhibit 46

Aug. 18-1933	R. R. Fare Lincoln to Minden	4.65
" "	Lunch Hastings	.75
	Dinner Kearney (2)	1.80
	Hotel Fort Kearney	2.50
19	R. R. Fare Kearney to Sidney	7.94
	Berth " "	3.75
	Breakfast "	.75
	Lunch " (2)	1.50
	Dinner Scottsbluff	1.00
20	Hotel "	1.00
	Telephone " to Casper	1.80
	R. R. Fare " "	6.17
	Pullman " "	1.35
	Breakfast " "	.55
	Lunch Casper (2)	1.65
	Dinner Casper "	.75
25	Telegrams Casper to Chadron & Norfolk	1.19
	Breakfast "	.50
	Lunch " (2)	1.20
	Dinner "	.85
26	Hotel "	2.00
26	Cab "	.35
	R. R. Fare & Pullman Casper to Norfolk	22.40
	Breakfast Casper	.60
	Lunch Chadron (2)	1.00
	Dinner Nevil	.50
	Taxi Norfolk	.50
27	Breakfast "	.60
	Lunch " (2)	1.30
	Dinner "	.75
Aug. 27-1933	Hotel & Telephone Norfolk	2.55
	Mileage Norfolk to Lincoln 130 miles	6.50
		82.20

Exhibit 46-A

All vouchers must be fully itemized and every item written on this voucher. Receipts for all cash expenditures must be attached to this voucher. All accounts must be sworn to before an officer using a seal.

STATE OF NEBRASKA

EXPENSE VOUCHER—DUPLICATE

To E. H. Luikart Dr. Month of August 19 33
Name

Supt of Banks Bureau of Department of Banking
Title

Date Month	Day	Particulars	R. R. Trans.	Allowance	Lodging	T & T Postage	Total
8	18	Lincoln to Minden...	4.65	2.55	2.50		9.70

19	Kearney to Sidney...	11.69	3.25			14.94
20	Scottsbluff	7.52	2.95	2.50	1.80	14.77
25			2.55		1.19	3.74
					Auto Hire	
26	Casper to Norfolk....	22.40	2.10	2.00	.85	27.35
27	Mileage Norfolk to Lincoln (130 mi)..	6.50	2.65	2.00	.55	11.70
		52.76	16.05	9.00	3.54	
					.85	82.20

Approved:
E. H. Luikart
Paid Check No. 4623

THE STATE OF NEBRASKA, }
ss.
LANCASTER COUNTY }

I, E. H. Luikart of Lincoln, Nebr., solemnly swear that the above account and voucher is a true, correct and complete statement of the account of myself for expenditures made for the State of Nebraska, as therein recited, and that the charges therein made are the legal, just and usual charge for said expenses, and that said bill or any part thereof, has not been paid heretofore by the State, but that the same is now wholly due and unpaid and that I am the party signing said voucher, and that I am fully conversant with the items charged herein, and that in manner and things this is a true, just and correct charge and item of indebtedness against the State of Nebraska.

E. H. Luikart
Name of person making affidavit

Subscribed in my presence and sworn to before me this 29 day of August 19 33.

Mary Gaddis
Notary Public

(SEAL)
Commission Expires Aug. 2, 1934.

I hereby certify that the places indicated by the person whose name appears in the above correctly represents the places visited and services rendered for the State of Nebraska, as shown by certified time records on file and that such person traveled on the business and for the benefit of the State of Nebraska pursuant to proper authority and that the person is entitled to the amount set out herein for expenses incurred by him during the period.

.....Approved.....date.....19....

Chief of Bureau Head of Department

I hereby certify that the claim specified herein is just and correct, and is for articles received; services rendered or amounts expended for the State of Nebraska and that the quality of the articles received, or service rendered was as ordered.

.....
Governor

EXAMINED AND ADJUSTED, $ .....

State Auditor

By.....
Deputy

APPROVED:

.....

Secretary of State

By.....
Deputy

Exhibit 55.

ROBERT R. ROSE
Attorney at Law
415 Consolidated Royalty Bldg.
CASPER, WYOMING

Phone 441

August 26, 1933.

Mr. E. H. Luikart,
c/o Banking Department,
Lincoln, Nebraska.

Dear Mr. Luikart:

Since you were in the office yesterday afternoon I have received information from the City Attorney's office with reference to the various improvement districts in which you are interested, and will pass this information on to you for whatever value it may have.

SANITARY SEWER DISTRICT NO. 16. This district is located in Kenwood, a rather poor section of the city on the east side, extending from South Jackson to South Fenway, and from East Eight to East Fifteenth. There were originally 104 bonds issued, only 11 of which have been paid. The interest on all the bonds has been delinquent since August 1, 1930.

SANITARY SEWER DISTRICT NO. 17. This property is located in the southeast section of town, rather a poor district, extending from West Fourteenth to Alcova Lane and from South Spruce to South Ash. There were 25 bonds issued, none of which have been paid. The interest has been delinquent since January 1, 1929.

PAVING DISTRICT NO. 34. This district extends from East Fourteenth to East Fifteenth and from South Durbin to South Mitchell, including much of the best portion of town. There were 158 bonds issued, the first 30 of which have been paid, and interest on all the bonds is delinquent since May 1, 1932.

PAVING DISTRICT NO. 36. This district extends from Conwell to South Lennox on East Second street. There were 136 bonds issued, 29 of which have been paid, with interest delinquent since May 1, 1932.

PAVING DISTRICT NO. 43. This district extends from East 11th to East 14th and from Durbin to Bonnie Brae Streets, a good section of town. There were 268 bonds issued, 81 of which have been paid. The interest is delinquent since May 1, 1932.

Yours very truly,
R. R. Rose

RRR/E.

Exhibit 56

August 29,1933

Judge R. R. Rose,
415 Conroy Building,
Casper, Wyoming.

My
Dear Judge:

As per our conversation when I called on you August 25, I am enclosing herewith a copy of a list of bonds that are in my charge as Receiver of five banks. This Schedule gives the numbers of the bonds that I hold—which is information that you particularly wanted.

I am also enclosing herewith the Opinion of Attorneys Pershing, Nye, Frye and Talmage of Denver, Colorado, relative to the issue of bonds on Sanitary School District Number 17 of which apparently the State Bank of Omaha owned the entire issue.

I thank you for your letter of August 26, in which you describe the property against which these various bonds are a lien. After you have gone over the situation relative to the bonds we own, kindly advise us what is necessary to do to best protect the various trusts holding the bonds.

Yours truly,
DEPARTMENT OF BANKING
Superintendent of Banks.

EHL*HKD
Encls.

Exhibit 57

November 21, 1933.

Mr. J. D. Ouderkirk,
c/o Casper National Bank,
Casper, Wyoming.

My Dear Mr. Ouderkirk:

Since returning from Wyoming I have just now gotten down to the daily grind, and among other things I have in mind our conversation about the real estate man, Mr. Bernard, who you thought might be able to trade the bonds I have in several receivership trusts on Casper.

I am enclosing you a list of the same herewith, and would ask you to be so kind as to see Mr. Bernard and have him make the attempt to trade these bonds for real estate in Casper. Preferably it should be clear of encumbrance, but if encumbered should show a very good margin of equity.

If he should be successful in finding any such exchange as this, please have him submit it to us with the proper showing as to the present value of the property to be exchanged, and I should like very much to have you, personally, be one of the three appraisers who set the value on the property. I presume in such an exchange, we should pay

Mr. Bernard the regular going commission at Casper on actual value of the property received.

Yours very truly,
Superintendent of Banks.

EHL:KF
Encl.

Exhibit 58

THE CASPER NATIONAL BANK

Casper, Wyoming
November 23, 1933

Jay W. Ouderkirk,
Executive Vice President
Mr. E. H. Luikart
Superintendent of Banks
Capitol Building
Lincoln, Nebraska
Dear Mr. Luikart:

This will acknowledge receipt of your letter of the 21st, enclosing a list of the Casper bonds. I have taken this matter up with Mr. Barnard and have conveyed to him the instructions in your letter.

I appreciate your expression of confidence in asking me to serve as one of the appraisers in event a deal is possible, and I shall do my best to give you an accurate estimate of the liquidating value of the property.

I am leaving for the East tonight and will be gone about ten days. As soon as I return I will check with Mr. Barnard and see what, if any, progress has been made.

If there is anything further you think of in which I may be of assistance, don't hesitate to write me.

Very truly yours,
J. W. Ouderkirk,
Vice President

JWO:RF

Exhibit 59

COPY

IN THE DISTRICT COURT OF SEWARD COUNTY, NEBRASKA.

State of Nebraska, ex rel,
C. A. Sorenson, Attorney General,
Plaintiff,

vs

Merchants Bank,
Utica, Nebraska,
Defendant.

APPLICATION FOR ORDER
TO SELL BONDS

Comes now Clarence G. Bliss and represents unto the Court:

I.

That he is the duly appointed, qualified and acting Secretary of the Department of Trade & Commerce of the State of Nebraska, and Receiver of the Merchants Bank, Utica, Nebraska, and as such receiver he is in charge of all of the business affairs and assets of said bank.

II.

That at the time of his appointment, your receiver came into possession of bonds of the par value of $35,000.00, said bonds being listed below:

INLAND STEEL COMPANY 4½% First Mortgage S. F. Gold Bond, Series "A" due April 1, 1978 $1 000.00

KINGDOM OF DENMARK 4½% 34-year External Loan Gold Bonds, due April 15, 1962, $1,000.00 each, 2 000.00

UNION PACIFIC RAILROAD COMPANY 40-year 4½% Gold Bond due July 1, 1967 1 000.00

CITY OF COPENHAGEN, 25-year 4½% Gold Bonds, $1,000.00 each, due May 1, 1953 2 000.00

REPUBLIC OF COLOMBIA, External S. F. Gold Bonds of '28, 6%, due October 1, 1961, $1,000.00 each 5 000.00

BROOKLYN CITY RAILROAD COMPANY, 5% First Mortgage Bonds upon the Consolidated Properties, due July 1, 1941, $500.00 each, 2 000.00

DEPARTMENT OF AKERSHUS (Norway), 35-year 5% External S. F. Gold Bond, due May 1, 1963, $1,000.00 each, 5 000.00

ABITIBI POWER & PAPER COMPANY, LTD., 5% First Mortgage Gold Bonds, Series "A" due June 1, 1953, 1 000.00

GOVERNMENT OF THE ARGENTINE NATION, 6% External S. F. Gold Bond, due February 1, 1961, 1 000.00

REPUBLIC OF FINLAND, 5½% External Loan S. F. Gold Bond, due February 1, 1958, 1 000.00

THE LONG BELL LUMBER COMPANY, 6% Gold Bond, First Mortgage, Series "A", due July 1, 1942, 1 000.00

SECURITY BOND AND MORTGAGE COMPANY, Series "K" First Mortgage Collateral Trust Gold Bonds, Secured under Deed of Trust dated 4-6-26, 5½%, due September 1, 1930, $1000.00 Each 3 000.00

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY 4½% Consolidated Mortgage Gold Bonds, Series "A", due March 1, 1978, $1000.00 each 5 000.00

COMMONWEALTH OF AUSTRALIA, 5% External Loan of '27, 30-year Gold Bonds, $1000.00 each, due September 1, 1957, 2 000.00

ROCHESTER CENTRAL POWER CORPORATION, 5% Gold Debentures, Series "A", due September 1, 1953, 1 000.00

AMERICAN GAS AND ELECTRIC COMPANY, 5% Gold Debentures, Series due 2028 on November 1st, $1000.00 each, 2 000.00

That your receiver will soon wish to pay a dividend to the cred-

itors of said bank, and in order to make the dividend a substantial one, it will be necessary that the above described bonds be disposed of on the open market.

WHEREFORE, your receiver prays for an order of this Court authorizing him to sell said bonds to the best possible advantage, on the open market, and to use the proceeds received from the sale of said bonds in the payment of a dividend to the creditors of said bank.

CGB

Secretary of the Department of Trade & Commerce of the State of Nebraska,

RECEIVER.

State of Nebraska, }
} ss.
Lancaster County. }

Clarence G. Bliss, being first duly sworn on his oath deposes and says: That he is the duly appointed, qualified and acting Secretary of the Department of Trade & Commerce of the State of Nebraska, and Receiver of the Merchants Bank, Utica, Nebraska; that he has read the above and foregoing application, knows the contents thereof, and that the allegations contained therein are true as he verily believes.

CGB

Subscribed in my presence and sworn to before me this 19 day of April, 1930.

M.G.

Notary Public.

COPY

IN THE DISTRICT COURT OF SEWARD COUNTY, NEBRASKA.

State of Nebraska, ex rel,
C. A. Sorensen, Attorney General,
Plaintiff,
vs.
Merchants Bank,
Utica, Nebraska,
Defendant.

ORDER TO SELL BONDS

This matter coming on to be heard before me, H. D. Landis, Judge of the District Court of Seward County, Nebraska, this 23 day of April, 1930, upon the application of Clarence G. Bliss, Secretary of the Department of Trade & Commerce of the State of Nebraska, and Receiver of the Merchants Bank, Utica, Nebraska, for an order of this court authorizing him to sell bonds aggregating $35,000.00 par value, said bonds being listed in the application of the receiver for sale of bonds, and it appearing to the Court that in order to pay a substantial dividend to the creditors of said bank, it will be necessary that said bonds be disposed of, and that it will be necessary to sell said bonds on the open market in order to receive the best possible price, the court

finds that it is for the best interests of the creditors of this trust that said bonds be disposed of on the open market.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that Clarence G. Bliss, as Receiver of the Merchants Bank, Utica, Nebraska, be and is hereby authorized to sell the said bonds on the open market, and use the proceeds thereof in payment of a dividend to the creditors of said bank.

H. D. Landis,
Judge of the District Court.

Exhibit 64

Record of Receiver's Reports

E. H. LUIKART ORIGINAL RECEIVERSHIPS

BANK	Date Last Previous Report Made	Date Last Report Made
BATTLE CREEK, Valley Bank	9-19-32	3- 1-35
COLUMBUS, Home Savings	10-18-32	3- 1-35
CRESTON, Citizens State	12-15-32	3-21-35
GRAND ISLAND, Peoples State	12- 7-32	3-28-35 FINAL
HERSHEY, Bank of Lincoln County	12-15-32	3- 1-35
MADISON, State Bank of	9- 9-32	3-21-35
PLATTE CENTER, Farmers State	2- 1-32	3-29-35
WISNER State Bank	11-30-32	3-19-35
AVOCA, Bank of	8-21-33	3-30-35
BASSETT, State Bank	3-10-33	3- 1-35
BEATRICE, Nebraska State	7-29-33	3-13-35
BEAVER CROSSING, Citizens State	5- 8-33	7-31-35
BENKELMAN, Farmers & Merchants State	7-20-33	3-13-35
BLADEN, State Bank of	4- 7-33	3-30-35
BLAIR, Citizens State	5-29-33	3-15-35
BLAIR, Farmers State	9-11-33	4-30-35
BLOOMFIELD, Nebraska State	4- 7-33	4-16-35
BRAINARD State Bank	5-20-33	3-30-35
CEDAR RAPIDS, Farmers State	4- 7-33	3-15-35
CHALCO, German-American State	5-17-33	4-16-35
CLAY CENTER State Bank	2-28-33	4-30-35
CONCORD, Farmers State	10-23-33	4-30-35
CORTLAND, Farmers State	5-26-33	3-13-35
COTESFIELD, First State	3-30-35	10- 4-35
CRAWFORD, Commercial State	6-10-33	5-17-35 FINAL
CROOKSTON, Farmers State	9-11-33	4-16-35
DAVID CITY, Butler County State	5-26-33	3-30-35
DESHLER, Farmers & Merchants Bank	5-26-33	6- 7-35
ELGIN, Farmers & Merchants Bank	2-28-33	3-30-35
ELM CREEK, City Bank	9-11-33	4-16-35
EXETER, F & M Bank	3-15-33	5-24-35 FINAL

BANK	Date Last Previous Report Made	Date Last Report Made
FARWELL State Bank	6- 1-35	10- 1-35
FORDYCE State Bank	1-10-33	3-13-35
FOSTER, F & M Bank	5- 8-33	5-29-35
FILLEY, State Bank of	9-11-33	3- 1-35
GRAF, Bank of	7-10-33	3- 1-35
HAMPTON, Farmers State	5- 8-33	3-30-35
HARTINGTON, Cedar County State	7-14-33	4-30-35
HEMINGFORD, Farmers State	9-20-33	5-15-35
HENDERSON, Farmers State	4-29-33	3-30-35
HERMAN, Plateau State	5-17-33	3-15-35
HOLDREGE, Phelps County Bank	8-21-33	4-16-35
HOSKINS State Bank	5-26-33	3-30-35
INLAND, Farmers State	5-17-33	4-30-35
INAVALE, Bank of	8-21-33	3- 1-35
IRVINGTON, State Bank of	10-23-33	4-30-35
LANHAM, State Bank of	8-31-33	3-15-35
LINDSAY, Farmers & Merchants Bank	5-26-33	3-30-35
LONG PINE, Nebraska State	1-10-33	4-30-35
LOUP CITY, American State	10-10-33	9-26-35
LYNCH, Bank of	9-30-33	3-30-35
LYNCH, Farmers State	7-10-33	3-30-35
MARSLAND State Bank	10-10-33	4-30-35
MASON CITY, Farmers State	5- 8-33	4-30-35
NAPER, Farmers State	5-26-33	3-15-35
NELIGH, Security State	6-10-33	5- 8-35
NELSON, Farmers State	7-31-33	4-30-35
NORFOLK Savings Bank	7-31-33	4-30-35
NORTH LOUP State Bank	10-31-33	4-30-35
OAKLAND State Bank	7-25-33	4-30-35
OMAHA, South Omaha State	12-14-33	4-30-35
ORD, State Bank of	1-14-33	3- 1-35
ORLEANS, State Bank of	1-23-33	3- 1-35
OTOE, Bank of	6-10-33	3-13-35
PAGE State Bank	1-25-33	3- 1-35
RAGAN, Bank of	8-21-33	4-30-35
RAVENNA, Security State	2-10-33	3-13-35
RAVENNA, State Bank of	3-24-33	3-29-35
RUSKIN State Bank	4-29-33	3- 1-35
SARGENT State Bank	5-26-33	5-15-35
SHELBY State Bank	2-25-33	3-13-35
SIDNEY, Liberty State	4-10-33	4-30-35
SPRINGFIELD, American State	2-25-33	3-30-35
ST. EDWARD, First State	3-10-33	4-16-35
SUMNER F & M Bank	7-25-33	3-30-35

BANK	Date Last Previous Report Made	Date Last Report Made
SUTHERLAND, Farmers State	2- 9-33	3-13-35
SWEDEBURG, State Bank	3-15-33	3- 1-35
VENANGO State Bank	5-17-33	5-31-35
WINSIDE, Merchants State	3-24-33	3-30-35
WINSLOW State Bank	2-28-33	4-16-35
WOOD RIVER, Farmers State	6-19-33	4-16-35
WYNOT, Farmers State	2-28-33	3-30-35
ANSELMO State	10-31-34	
AURORA, Fidelity State	5-14-34	3-30-35
BREWSTER State	4-30-34	
BRUNO State	8-13-34	
DWIGHT State	12-15-34	
DUNNING, State Bank of	4-30-34	
FIRTH Bank	12-31-34	
GLENVIL, Farmers State	6- 1-34	5-15-35
GRANT, Commercial Bank	12-31-34	5-31-35
GRETNA, Bank of	12-31-34	
HARRISON State	8-13-34	8-15-35 FINAL
HOLBROOK, Bank of	12-31-34	
HOLSTEIN, First State	12-31-34	
HOOPER State	8-13-34	5-15-35
McCOOK, F & M	2-21-34	4-30-35
MASON CITY Banking Co.	10-31-34	
MILLARD, German Bank of	12-15-34	4-16-35
OMAHA, State Bank of	4- 1-34	3- 1-35
ORCHARD, Citizens State	8-27-34	4-16-35 FINAL
PAULINE State	5- 1-34	5-15-35
PLEASANT DALE, First State	12-31-34	
RAYMOND, Bank of	12-31-34	
SCOTTSBLUFF, P V S Bank	12-31-34	10- 1-35
STAPLETON, Farmers State	4-30-34	12-10-34 FINAL
TECUMSEH State	8-31-34	
VERDIGRE State	5-15-34	8-24-35
WESTON Bank	4-10-34	4-16-35
BEE, State Bank of	2-28-35	
CAMPBELL, Bank of	3- 1-35	
COMSTOCK, Citizens State	3- 1-35	5-31-35 FINAL
FRANKLIN, Exchange	3- 1-35	
LEIGH State	3- 6-35	
MACON State	3- 1-35	
NAPONEE State	3- 1-35	
RIVERTON State	3- 1-35	
SYRACUSE, Bank of	2-20-35 FINAL	
UPLAND Banking Company	3- 1-35	

BANK	Date Last Previous Report Made	Date Last Report Made
UPLAND, Peoples Bank	3- 1-35	
WAUNETA, Peoples Bank	2-20-35	
GILTNER State		3-30-35
BLAIR, Citizens Savings		3-27-35

No reports made on following:

BENKELMAN, Bank of (No Deposits)
VERONA, Farmers State

BLISS RECEIVERSHIPS
TRANSFERRED TO
E. H. LUIKART.

BANK	Date Last Previous Report Made	Date Last Report Made
BRADISH, Farmers State	7-22-31	6-12-35
BURTON State	7-18-31	6-12-35
HALLAM, Farmers State	7- 9-31	11-28-34
DENTON State	7- 9-31	6-13-35
LITCHFIELD, State Bank of	10-21-31	6-10-35
OVERTON, Farmers State	8-18-31	5-15-35
PANAMA, Farmers State	7- 9-31	6-11-35 FINAL
SPRAGUE, Bank of	7- 9-31	7- 1-35
TOUHY, State Bank of	8- 3-31	8- 8-35
VERDIGRE, Knox County	7-10-31	3- 1-35
NORFOLK, Nebraska State	7-10-31	5-15-35
FULLERTON, Farmers State	5-18-32	4-17-35
GENOA, Farmers State	6- 6-32	4-30-35
GRAINTON, Perkins County State	4-30-32	5-31-35
HAIGLER, State Bank of	11-26-32	4-18-35
HAVELOCK, Farmers & Mechanics	4-30-32	6-21-35 FINAL
HAVENS, State Bank of	6-14-32	6-26-35
LOUP CITY, State Bank	11-26-32	5-25-35
ODELL, Hinds State	5-31-32	5-31-35
POLK, Bank of	11-22-32	6- 1-35
PONCA, Security Bank of	11-26-32	5-25-35
REPUBLICAN CITY, Nebraska State	5-18-32	5-25-35
SCRIBNER State	5-31-32	8-21-35
STANTON, Elkhorn Valley	5-31-35	9-24-35 FINAL
ST. EDWARD, Farmers State	5-31-32	5-28-35
ALLIANCE, First State	1- 5-33	4-15-35
ASHLAND State	12-27-33	
BEEMER State	10- 2-33	3-18-35 FINAL
BELVIDERE, State Bank of	12-28-33	5-21-35
CHADRON State	10-31-33	5-15-35
CLARKS, State Bank of	12-30-33	8-22-35

BANK	Date Last Previous Report Made	Date Last Report Made
CODY, Ranchers State	12-30-33	5-18-35
CREIGHTON, Security Bank	12- 6-33	9-17-35
DOUGLAS, Bank of	12-30-33	
GURLEY, Farmers State	11-15-33	
LINCOLN, First State	1- 5-33	12-31-34
LINDSAY, State Bank	11-15-33	
LOOMIS, Farmers State	11-15-33	10- 9-35
MALMO State	11-28-33	
MARION State	12-26-33	10- 3-35 FINAL
MEADOW GROVE, Security Bank	11-15-33	5-27-35
MILLER, First Bank of	12-28-33	5-27-35
ONG, Bank of Commerce	12-26-33	8-23-35
PIERCE State	12- 6-33	10- 8-35
RALSTON State	11-28-33	
VALPARAISO, Nebraska State	11-28-33	
WESTON, Farmers & Merchants	12-30-33	4-22-35
BELGRADE, Farmers State	11-28-34	
BENKELMAN, Citizens State	1-15-34	5-28-35
BRESLAU State	11-28-34	10- 8-35
JULIAN, Bank of	12- 7-34	8- 7-35 FINAL
MILFORD, Nebraska State	5-15-34	
MONOWI, Ponca Valley State	12-13-34	
NEWMAN GROVE State	12-31-34	
NEWPORT, Farmers State	5-15-34	
O'NEILL, Nebraska State	5-15-34	10- 8-35
ONG, Exchange Bank	3-31-34	9-17-35
RAVENNA, Citizens State	1-15-34	6-20-35
ROHRS, Farmers Security State	11-28-34	
SCOTIA, Farmers State	12-21-34	
WAHOO, Citizens State	1-15-34	10- 4-35
WAHOO, Nebraska State Savings	1-31-34	8-27-35
FORT CALHOUN, Washington County	12- 6-34	
NEWMAN GROVE, Farmers State	2-28-35	
SUPERIOR, Citizens State	2-26-35	
PIERCE, Citizens State	2-27-35	
STUART, Citizens Bank of	2-18-35	
ORLEANS, Bank of	3- 1-35	

COMMISSION RECEIVERSHIPS
TRANSFERRED TO
E. H. LUIKART.

ALTONA, Farmers State	11-30-31	5-22-35
BASSETT, State Bank of	6-26-35	7-24-35
BELDEN, Farmers State	11-23-31	
BENNINGTON State	12-12-31	5-22-35

BANK	Date Last Previous Report Made	Date Last Report Made
BLAIR, The State Bank	12-29-31	5-25-35
BROKEN BOW, Custer State	10-21-31	5-27-35
BRUNSWICK, Farmers State	11-23-31	6-26-35
CARROLL, Citizens State	7-10-31	10- 7-35
CHADRON, Citizens State	8-14-31	8-20-35
CLEARWATER, State Bank of	12-19-31	6-27-35
COTESFIELD, Farmers State	8- 4-31	10- 7-35
CROFTON, Farmers State	12-10-31	10-18-35 FINAL
CROOKSTON, Bank of	8-14-31	10- 9-35
DANNEBROG, State	7- 1-35	10- 7-35
DIXON, Farmers State	11-23-31	
DUNBAR, State	7-20-31	5-28-35
EDDYVILLE, Security State	8-18-31	8-30-35
ELGIN, State Bank	12-10-31	8-16-35
ERICSON, Farmers State	8- 4-31	9-18-35 FINAL
EWING, State	7-18-31	6-20-35
EWING, Pioneer Bank	7-18-31	6-25-35
JACKSON, State Bank	11-23-31	8- 5-35
JOHNSTON, Citizens Bank	7-18-31	6-28-35
KENNARD, Farmers & Merchants	7-25-31	6-26-35
LAKESIDE, State Bank	8-14-31	9- 3-35
MAGNET, State Bank	11-23-31	7-23-35
MEADOW GROVE, State	11-30-31	6-29-35
MURPHY, First State	8- 3-31	8-12-35
NELSON, State Bank of	10- 3-31	8-15-35
NEWCASTLE, Farmers State	7-10-31	7- 3-35
NORTH BEND, First State	7-22-31	9- 5-35
OMAHA (Florence), Commercial State	7-25-31	10- 9-35
OMAHA, Security State	7-25-31	7-22-35
RALSTON, Citizens State	12-10-31	10-10-35
ROSALIE, Farmers State	7-10-31	7-23-35
SILVER CREEK, State	7-22-31	6-26-35
SNYDER, State	7-22-31	6-13-35
SPRING RANCH, The Blue Valley State	10-14-31	8- 7-35 FINAL
STERLING, Farmers & Merchants	8-10-31	6-28-35
SUPERIOR, State Bank of	10- 3-31	8- 9-35
THURSTON, State	7-10-31	8- 6-35
ULYSSES, First Bank of	12-24-31	6-29-35
WAHOO, Farmers & Merchants State	12-19-31	5-31-35
WESTERN, State	7- 1-35	8-16-35 FINAL
WINNETOON, First State	7-10-31	6-19-35
WOLBACH, Farmers State	8- 4-31	7- 1-35
YORK, Farmers State	8- 3-31	6-17-35
ENOLA, State Bank	4-30-32	8-14-35

BANK	Date Last Previous Report Made	Date Last Report Made
FAIRFIELD, Citizens Bank	5-31-32	
GREELEY, Greeley State	5-20-32	4-10-35 FINAL
MOUNT CLARE, State Bank	5-31-32	8-13-35
NORTH PLATTE, Platte Valley State	10- 1-32	
OAKDALE, Antelope County	4-30-32	
PETERSBURG, Farmers State	4-30-32	8-13-35
TILDEN, State Bank	5-31-32	8-14-35
VESTA, State Bank	5-31-32	9- 9-35
WAKEFIELD, Security State	4-30-32	8-12-35
NEWPORT, Rock County State Bank	5-24-34	
ADMINISTRATIVE RECEIVERSHIPS		
ANOKA, Boyd County State	1-15-35	
ARCHER, Citizens State	1-15-35	
BATTLE CREEK, Farmers Bank	1-15-35	
BEAVER CROSSING, State Bank of	1-15-35	
BERTRAND, First State	1-15-35	
BLADEN, Exchange Bank	1-15-35	
BRULE, Farmers State	1-15-35	
BURWELL, Farmers Bank	1-15-35	
BURWELL, First State	1-15-35	
BYRON, Farmers & Merchants	1-15-35	
CALLAWAY, Farmers State	1-15-35	
CARROLL, State	1-15-35	
CEDAR BLUFFS, Bank of	1-15-35	
CEDAR RAPIDS, Citizens State	1-15-35	
CENTRAL CITY, Platte Valley State	1-15-35	
CHAPMAN, State	1-15-35	
CHAPPELL, State	1-15-35	
CHESTER, State	1-15-35	
CLARKSON, State	1-15-35	
CLARKSON, Farmers State	1-15-35	
CLATONIA, State	1-15-35	10-10-35
COLUMBUS, Farmers State	1-15-35	9-19-35
CORDOVA, State	1-15-35	
COWLES, State	1-15-35	
CURTIS, Security State	1-15-35	
DANBURY, Bank of	1-15-35	
DORCHESTER, Bank of	1-15-35	
DUNBAR, Farmers Bank	1-15-35	
DUNCAN, State	1-15-35	
EDGAR, Clay County State	1-15-35	
EDGAR, State Bank of	1-15-35	
ELKHORN, State Bank of	1-15-35	
ELMWOOD, State	1-15-35	

BANK	Date Last Previous Report Made	Date Last Report Made
FORT CALHOUN, State	1-15-35	
FRIEND, State	1-15-35	
GANDY, Bank of Logan County	1-15-35	
GARLAND, Germantown State	1-15-35	
GREENWOOD, State	1-15-35	
GUIDE ROCK, Bank of	1-15-35	
HAZARD, State	1-15-35	
HEBRON, State	1-15-35	
HENDERSON, Bank of	1-15-35	5-22-35
HOWE, Bank of	1-15-35	
HOWELLS, Colfax County Bank	1-15-35	
INDIANOLA, State	1-15-35	
KEARNEY, Farmers State	1-15-35	
LOUSIVILLE, Bank of Commerce	1-15-35	10-11-35
LYONS, Farmers Bank	1-15-35	
MASKELL, Security State	1-15-35	
MULLEN, Citizens State	1-15-35	
MURDOCK, Bank of	1-15-35	5- 9-35
OBERT, Farmers State	1-15-35	
OSMOND, Security State	1-15-35	
PERU, Citizens State	1-15-35	
PILGER, State	1-15-35	
PLATTE CENTER, Platte County Bank	1-15-35	
PLEASANTON, State	1-15-35	
RED CLOUD, State Bank of	1-15-35	
REYNOLDS, Farmers State	1-15-35	
ROCKVILLE, State	1-15-35	
ROGERS, Bank of	1-15-35	10- 8-35
ROSEMONT, Bank of	1-15-35	
SCHUYLER, Banking House of F. Folda	1-15-35	
SCOTIA, Bank of	1-15-35	
SNYDER, Farmers & Merchants	1-15-35	
STAPLEHURST, Bank of	1-15-35	
STERLING, First State	1-15-35	
SUTHERLAND, American State	1-15-35	
TRUMBULL, Farmers Exchange Bank	1-15-35	
UEHLING, Logan Valley Bank	1-15-35	
UNION, Bank of	1-15-35	
WHITNEY, Farmers & Drovers State	1-15-35	10-12-35
WILCOX, Exchange Bank	1-15-35	
WINSIDE, Citizens State	1-15-35	
WOOD LAKE, Citizens State	1-15-35	
WOOD LAKE, Wood Lake Bank	1-15-35	
BARNESTON, Bank of	1-15-35	

BANK	Date Last Previous Report Made	Date Last Report Made
KENESAW, First State	10-16-35	
LEWELLEN, Farmers State	1-15-35	
OMAHA, Union State	8-20-35	

No Report Made on Following:

ALBION, Farmers State
HARTINGTON, Peoples Savings

Exhibit 65

"May 2, 1934.
Bank of Ragan.

Memorandum to Mr. Radke:

Prior to receivership, the Bank of Ragan, Ragan, Nebraska, pledged the following bonds as security for funds of Harlan County:

$1,000 Lincoln Joint Stock Land Bank, 4½'s-'66
No. M307551
$6,000 Lincoln Joint Stock Land Bank, 5 's-'43
No. M212760/1 M211331/2 M211358 M211850.
$5,000 Lincoln Joint Stock Land Bank, 5 's-51
No. M139080/4 Inclusive.
$4,000 Harlan County Bridge Warrants.

The securities were held in escrow by the Commerce Trust Company of Lincoln, Nebraska, under Escrow Agreements, one of the terms of the agreement being that on default of the bank, the county could obtain the securities from the Escrow Agent and sell them in satisfaction of their deposits.

The bank closed October 7th, 1931, and the Treasurer obtained possession of the securities on a showing the bank was unable to pay checks in the usual course of business. About the same time, the Department furnished a certificate that the bank was in default and unable to meet the demands of depositors in the usual course of business.

The securities were transferred from the Escrow Receipt at the Commerce Trust Company to a safe-keeping receipt in the name of the County Clerk of Harlan County. They were so held until April 12, 1932, at which time they were sold. The County took over the Bridge Warrants at par and interest for a total of $4,000.00. The Joint Stock Land Bonds were sold to the Lincoln Joint Stock Land Bank of Lincoln as follows:

$1,000—Lincoln Joint Stock Land Bank, 4½'s-'66 @52¼ 537.63
$6,000—Lincoln Joint Stock Land Bank, 5's-'43 @ 66¼ 3975.00

$5,000—Lincoln Joint Stock Land Bank,
5's-'51 @ 60 3000.00

7512.63
Interest on all 5's..... 245.97

Check of Lincoln Joint Stock Land Bank
issued 4-12-32 for..... 7758.60

The sale was handled by W. C. Oelkers, then employed in the State Treasurer's office. Check to the Lincoln Joint Stock Land Bank is made payable to W. C. Oelkers, but is registered on their books as: 'W. C. Oelkers for County Treasurer of Harlan County.' Mr. Oelkers obtained the bonds from the Commerce Trust Company on April 12, 1932, by surrendering the receipts issued to the County Clerk which carry the endorsement of the Clerk; also W. C. Oelkers. Original receipts are in possession of the Commerce Trust Company, Lincoln.

The check of the Lincoln Joint Stock Land Bank of $7758.60 was cashed at the Continental National Bank of Lincoln on April 12, 1932, a cashier's check No. 64780 being issued for $7300.00 payable to the County Treasurer of Harlan County. For the balance, $100.00 was taken in cash, and $358.60 credited to Mrs. W. C. Oelkers on the books of the Continental National, being a new account on that date, and was checked out by May 9, 1932.

According to letter dated March 23, 1934, the County received the $7,300 which was the exact amount needed to balance the account, and he states in answer to inquiry dated March 28, 1934, that the County has no further claims against the Bank of Ragan.

Demand has been made of the County to pay the Receiver of the Bank of Ragan the excess received from the bonds in the amount of $458.60. In a letter dated April 20, 1934, the Treasurer claims the Company has not received it, which is apparently true, and denies any liability.

It is Mr. Luikart's wish that suit be brought for an accounting and to recover the excess proceeds from the bonds. Attached is my entire file.

Very truly yours,

IWH:I Auditor, Rec'ship Division."

Exhibit 66

'IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA.
IN THE MATTER OF THE
GUARDIANSHIP OF JAMES H.
DINGWELL, INCOMPETENT
Doc. 284 No. 178
DECREE

THE OMAHA NATIONAL BANK,
Guardian of JAMES H. DINGWELL, Incompetent,
Appellee

VS.

JOHN S. MC GURK, Appellant.

Now on this 26th day of September, 1932, this cause having heretofore come on for hearing upon the Report of John S. McGurk, former guardian, and upon the objections to the Report of John S. McGurk and the Reply to objections filed in his behalf and upon the evidence, and the Court being fully advised in the premises finds:

Generally in favor of The Omaha National Bank, substituted guardian and objector, and against John S. McGurk, retiring guardian; that John S. McGurk, retiring guardian of James H. Dingwell, Incompetent, received in his capacity as such guardian, assets of the said James H. Dingwell in the total sum of $52,263.83; that said property consisted of cash and that upon receipt thereof by said guardian the sum of $8,263.83 was deposited by the said John S. McGurk in a checking account to the credit of John S. McGurk, Guardian of James H. Dingwell, Incompetent, in the South Omaha State Bank on the 31st day of July, 1931; and that the sum of $44,000 was deposited by the said John S. McGurk in a savings account to the credit of John S. McGurk, Guardian of James H. Dingwell, Incompetent, in the South Omaha State Bank on the 5th day of August, 1931; that at the time said deposits were made the said John S. McGurk owned eight-seven per cent of the capital stock of the South Omaha State Bank and that the remainder of said stock was owned by one C. E. Goddard, a large borrower from the bank, the purchase price of whose stock therein was represented by an accommodation note held by the bank; and that on said dates John S. McGurk was the president and managing officer of said bank and was in active control of its operation; that the said South Omaha State Bank failed to open for business on the morning of the 14th day of August, 1931, and that it was taken over by the Department of Trade and Commerce of the State of Nebraska as an insolvent bank on said date.

The Court further finds that said John S. McGurk, guardian of James H. Dingwell, incompetent, paid to Glens Falls Indemnity, the sum of $190.00 out of the assets of said estate in his possession as premium on guardian's bond furnished by him and that he is entitled to credit for that amount on his final account.

The Court further finds that more than $250,000.00 of the bank's assets were pledged and had been pledged since November, 1930, to secure from another bank an advancement of $100,000.00; that the capital of the South Omaha State Bank was greatly impaired by other frozen assets and that its cash reserve was at the time of said deposits below statutory requirements and that said reserve had been below said requirements for some time prior to the making of said deposits by the said John S. McGurk.

The Court further finds that the facts in regard to the financial condition of the South Omaha State Bank were fully known to John S. McGurk on the 31st day of July and the 5th day of August, 1931, and that said John S. McGurk, retiring Guardian, should not be credited with the deposit of the funds of the said James H. Dingwell, Incompetent, made by him in the South Omaha State Bank on said dates and that in making such deposits the said John S. McGurk, guardian of James H. Dingwell, incompetent, did not exercise due care and prudence in disposing of said guardianship funds.

WHEREFORE IT IS CONSIDERED ORDERED AND DECREED that the accounting of John S. McGurk, guardian of James H. Dingwell, incompetent, heretofore submitted be, and the same hereby is, disallowed, and the objections of The Omaha National Bank, substituted guardian, to said final account are sustained and the said John S. McGurk is hereby ordered to pay to The Omaha National Bank, substituted guardian of James H. Dingwell, incompetent, the sum of $55,-408.45, together with interest at seven per cent per annum from the date of this decree and the costs of action.

BY THE COURT:

W. G. HASTINGS,

JUDGE.

G. F. Nye,

Attorney.

Received Sep. 26, 1932, Journal Clerk.
Recorded Journal 308, Page 580.
Clerk District Court."

Exhibit 67

"IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA.

E. H. LUIKART, Receiver, South Omaha State Bank, Omaha, Nebraska,

Plaintiff,

vs.

John S. McGurk, John Kresl, Clair E. Goddard, Frank L. Vlach, also known as F. L. Vlach, Joseph J. Pavlik, Frank M. Lepinski, Trustee,

Defendants.

DOC. 279 No. 234.

PETITION
AND
PRAECIPE

Comes now the plaintiff and for his cause of action against the defendants and each of them alleges as follows:

I.

That the plaintiff is the duly appointed, qualified and acting receiver of the South Omaha State Bank, Omaha, Nebraska, and duly authorized

to bring this action under and by virtue of the constitution and laws of the State of Nebraska and the orders of the District Court of Douglas County, Nebraska.

II.

That the South Omaha State Bank, Omaha, Nebraska, was during all the time herein mentioned a corporation duly organized under and existing by virtue of the laws of the State of Nebraska relative to banks and banking, and under said corporate name was engaged in conducting a banking business as a state bank in the city of Omaha in Douglas County, Nebraska, having its principal office and place of business therein.

III.

That said South Omaha State Bank, Omaha, Nebraska, became financially involved and insolvent and embarrassed to such an extent that proceedings were duly instituted in the District Court of Douglas County, Nebraska, to liquidate and wind up the affairs of said corporation and to have a receiver appointed; that accordingly on the 29th day of August, 1931, E. H. Luikart was duly appointed receiver of said bank and that said proceedings for the appointment of said receiver and all actions in connection with said proceedings were had according to law, and that it was duly adjudged and ascertained by said district court that said South Omaha State Bank, Omaha, Nebraska, was insolvent and unable to pay its creditors and that said banking corporation had debts and liabilities in the aggregate sum of more than $100,000 over and above its assets, which was an indebtedness and liability of said banking corporation.

IV.

That the following named persons were the owners and holders of the whole and entire capital stock of said South Omaha State Bank, Omaha, Nebraska, to-wit:

John S. McGurk
Frank L. Vlach
Clair E. Goddard
John Kresl
John T. Marcell

and were such stockholders and owners of the capital stock of said bank at the time of the institution of said action and proceedings for receivership, and for some time prior thereto.

V.

That on or about the 9th day of March, 1928, the defendant Frank M. Lepinski, trustee, became the owner and holder of stock certificate No. 125 of the capital stock of said bank and continued to be a stockholder in said South Omaha State Bank, Omaha, Nebraska, until a few months prior to the date of the appointment of the receiver as aforesaid; that the said Frank M. Lepinski, trustee, did at a time unknown to this plaintiff, assign said stock certificate in blank and deliver the same to said bank, said defendant knowing full well at said time that

said bank was insolvent and in a failing condition; that said assignment as aforesaid in blank was made for the purpose of evading and defeating the double liability of said defendant as a stockholder in said banking institution.

That the said Joseph J. Pavlik, defendant, became the owner and holder of stock certificate No. 122 on or about the 23rd day of January, 1928; that thereafter and on a date unknown to his plaintiff, the said Joseph J. Pavlik, Defendant, did assign said stock certificate in blank and deliver the same to said bank; that said defendant did at the time of said assignment know full well of the failing and insolvent condition of said bank and that said transfer was made for the purpose of evading and defeating his said double liability as a stockholder.

That said assignments and pretended transfers, as aforesaid, and each of them were made wholly without consideration and for the purpose of evading and defeating an action to collect the double liability of stockholders in event of receivership and for the purpose of defrauding the depositors and creditors of said bank.

VI.

That none of said stockholders have settled or paid their liability as such, except said John T. Marcell, who has fully settled his said liability as a stockholder, which said settlement was on October 14th, 1931, upon application duly made to the District Court of Douglas County, Nebraska, approved by said Court.

VII.

That the subscription price of said capital stock was fully paid for in cash and that there is now due and owing to the creditors from the defendants on their double liability as stockholders in said bank the sum of $100,000; that each and all of said defendants are liable for the payment thereof to the extent of the capital stock in said bank held by each of them; that the aforesaid indebtedness and liabilities existed and accrued while the said defendants remained stockholders of said bank and that each defendant is liable to contribute to the payment of the aforesaid sum under and by virtue of the premises and the statutes of the State of Nebraska made in that behalf and the Constitution of the State of Nebraska in that behalf, in an amount equal to the stock held by each of said defendants in said bank; that the capital stock of said bank was $100,000 divided into 1,000 shares of the par value of $100 per share.

VIII.

That said defendants and each of them have been requested severally each to make payment and to contribute to the aforesaid double liability of the stockholders and each has failed and neglected so to do and the whole of the liability against said defendants, as above set forth, is wholly unpaid; that each of the aforesaid defendants and each and all of the creditors of said banking corporation for whose benefit this action is brought are interested and have a joint and common interest in adjudging the exact amount due and owing to the creditors of

the said South Omaha State Bank, Omaha, Nebraska, and the apportioning of the aforesaid double liability among said defendants herein and in apportioning the proceeds thereof among the creditors of said bank; that this is an action of accounting brought for said purpose and that this said action is brought for the purpose of avoiding a multiplicity of suits at law and that this plaintiff, for the reasons aforesaid, has no adequate remedy at law.

WHEREFORE, plaintiff prays that an accounting may be had and that it may be determined the number of shares of the capital stock of said banking corporation owned and held by each of said defendants and the amount which each defendant is liable to contribute to the payment of the balance of said indebtedness and liability of said South Omaha State Bank, Omaha, Nebraska, and that it be ascertained, determined and ordered that each defendant be required to pay the mount so fixed as the amount of his liability and contribution as aforesaid; that said defendants specifically be required to pay the same within a short time to be named by the court and that in default of such payment, judgment be rendered against the defendants so defaulting to pay such judgment in the amount ascertained and adjudged as aforesaid, and that execution be awarded against each defendant to collect the amount so adjudged against him, together with interest and costs and that said defendants be adjudged to pay the costs of this action and the plaintiff further prays that he may have such other and further relief as may be just and equitable in the premises.

E. H. Luikart, Receiver, South
Omaha State Bank, Omaha, Nebraska,
BY (signed) Barlow Nye, F. C. Radke,
O'Sullivan & Southard,
His Attorneys

THE STATE OF NEBRASKA, } ss.
DOUGLAS COUNTY }

I, C. J. SOUTHARD, being first duly sworn on oath depose and say, that I am one of the attorneys for E. H. Luikart, Receiver, South Omaha State Bank, Omaha, Nebraska; that said Receiver is a non-resident of Douglas County, Nebraska, and I, therefore, make this verification on his behalf; that I have read and know the contents of the foregoing petition and that the statements therein contained are true as I believe.

(Signed) C. J. Southard.

Subscribed in my presence and sworn to before me this 23 day of October, 1931.

(Signed) Arthur J. Whalen
Notary Public.

(NOTARIAL SEAL)

PRAECIPE

To the Clerk of the Court:

You are hereby requested to issue summons for the above named

defendants and make summons directed to the Sheriff of your county for the following defendants:

John S. McGurk
John Kresl
Clair E. Goddard
Frank L. Vlach
Joseph J. Pavlik
Frank M. Lepinski, Trustee

You may endorse thereon "equitable relief."

(Signed) C. J. Southard
Attorney for Receiver.

(Stamped—"Filed in District Court, Douglas County, Nebraska, Oct. 23, 1931. Robert Smith, Clerk.)"

Exhibit 68

"DEPARTMENT OF TRADE AND
COMMERCE
E. H. LUIKART, Secretary
Bureau of Banking
Bureau of Insurance
Bureau of Securities
Bureau of Fire Prevention
Bureau of Receiverships

STATE OF NEBRASKA
CHARLES W. BRYAN, Governor
LINCOLN

November 19, 1931.

Mr. A. R. Oleson,
Attorney at Law,
Wisner, Nebraska.

My dear Mr. Oleson:

Governor Bryan transmitted to me your letter to him of the 17th and asked me to thank you very kindly for the interest you are showing in the matter mentioned therein.

It is very evident that the officers and directors of this bank may be transferring their property with the intent of attempting to evade their responsibility for double liability on stock. More than likely these transfers will have to be undone by court action.

The Governor asked me to inquire of you if you would be in a position to handle the legal matters that will have to do with the receivership in this bank, and also secure the restitution of this property so it can be held for any liability that may be due from the transferees to the depositors of the bank. Heretofore, the Governor has mentioned that we should use your services in legal business in your territory but because of the difficulties we have been having with receiverships transferred from Clarence G. Bliss to myself, which is now practically settled, we have not heretofore, been in a position to do much in the selection of the

attorneys that will be required. Please advise me if this business will interest you.

Yours very truly,
(Signed) E. H. Luikart
Secretary.

EHL:MK"

Exhibit 69

"IN THE DISTRICT COURT DOUGLAS COUNTY, NEBRASKA

State of Nebraska, ex rel,
C. A. Sorensen, Attorney
General,

Plaintiff,

vs.

South Omaha State Bank,
Omaha, Nebraska,

Defendant.

ORDER APPOINTING RECEIVER

Now on this 29th day of August, 1931, the interested parties being present or represented, this cause came on for hearing upon the application of the State of Nebraska, ex rel, C. A. Sorensen, Attorney General, plaintiff, for a determination as to the solvency of defendant bank, and for an order placing said bank in receivership and liquidating it as provided by law.

The court having heard and considered the evidence, and being fully advised in the premises as to the law and the facts, finds that due notice of this hearing has been given, as provided by law, and that said bank is insolvent, and that said bank has violated the law, as alleged in the petition, and that the allegations contained in the petition filed herein are true and that it is necessary that said bank be placed in receivership as provided by law and ordered to be liquidated.

The court further finds that by Sections 8-192 and 8-193, Compiled Statutes of Nebraska for 1929, it is provided that the Secretary of the Department of Trade & Commerce shall be the sole and only receiver of failed or insolvent banks and that the assets of said bank shall be placed in the hands of the Secretary of the Department of Trade & Commerce, and liquidation shall thereafter be had under order of court in the manner provided by law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that said South Omaha State Bank, Omaha, Nebraska, is insolvent; that E. H. Luikart as Secretary of the Department of Trade & Commerce be, and he hereby is, appointed receiver of said bank by virtue of his said office, as provided by Section 8-192, Compiled Statutes, 1929.

Said receiver shall proceed to liquidate said bank above named as provided by law and he shall give a good and sufficient bond in the amount of $200,000 in form and conditioned as provided by law, and to be approved by the clerk of this court.

That upon the giving and approval of said bond and taking oath as ordered, the said E. H. Luikart, as Secretary of the Department of Trade & Commerce, and receiver of said bank, is hereby authorized and ordered to take possession as provided by law, of all the books, records, and assets of every kind and description belonging to the said South Omaha State Bank, Omaha, Nebraska, and he is further ordered and empowered to proceed with due diligence to collect all debts due and owing said bank and reduce the same as speedily and economically as possible to money. Said secretary and receiver is further authorized and empowered to sell and dispose of any and all property, both real and personal, belonging to said bank, to the best possible advantage and to compound any and all debts and claims due said bank, subject to the approval of the court, and as provided by law.

IT IS FURTHER ORDERED that said secretary and receiver be and he is hereby authorized and directed to do any and all other acts essential and necessary to the speedy termination of the affairs of said bank and that he file such suits as are necessary, and take such legal action as may be necessary to recover upon the indebtedness due the said South Omaha State Bank, Omaha, Nebraska, subject to the approval of the court, and as provided by law.

IT IS FURTHER ORDERED that said secretary and receiver from time to time report his acts and doings in the premises to this court as required by law or by order of this court.

(Signed) F. M. Dineen
Judge of District Court."

Exhibit 70

"December 7, 1933.

Mr. Jas. P. Boler,
Assistant Receiver,
O'Neill, Nebraska.

Re: Citizens Bank of Stuart.

Dear Mr. Boler:

I have your letter of December 4, 1933, relative to the depositors committee requesting that we pay no more attorneys' fees until we have first submitted the bill to them.

After studying this matter over, I find that we cannot comply with the request for the reason that this would be delegating our authority to a committee which has no existence in law and which has no authority whatever. You must understand that the receiver and the assistant are both under bond and are officers of the court, and as such officers cannot delegate any of their authority.

We file reports in every bank every quarter and the committee are at liberty to examine these reports, in fact, I believe a copy of the report is furnished for the committee. When they find an item for attorneys' fees paid which they believe to be excessive, they have the liberty of making objections to the court and having the matter heard

in the regular way. This would protect every one and then no one would have reason for complaint.

Speaking with special reference to the above named bank, we find the facts to be that this bank would have had practically no assets to distribute excepting for the hard work of attorneys in recovering the assets which had been disposed of by the officers of the bank previous to its closing. I have closely considered the fees paid in this bank for the services rendered and I know that the fees allowed are far below the amount that would ordinarily be paid in like matters where the state department does not have the control such as we have now.

In fact there are several instances over the state where an individual depositor, or depositors committees and even the receiver have objected to the amount of the claim filed by the attorneys and almost in every instance, the committee and the department have been defeated and in several instances, the court has even allowed more than the attorneys originally requested. We have overcome this point to a great extent by entering into the contract with the attorney whereby the amount of the fee is finally to be passed on by myself, which has the effect of limiting the amount which the attorney could recover. However, even after such allowance by myself, the fee is subject to approval by the court and the committee or any other depositor has the right to complain but to do so must file an objection with the court. In case such an objection is filed, I assure you we take no offense and will be glad to have the matter submitted to the court.

I am asking that you explain this matter thoroughly to the com mittee and extend to them my compliments.

Yours very truly,

F. C. Radke,

General Counsel.

FCR:JN"

(Following letter attached)

"NEBRASKA STATE BANK

Capital $25,000.00.

NBS

James F. O'Donnell, President

J. A. Donohoe, Vice President

P. J. O'Donnell, Cashier.

O'Neill, Neb.

December 4, 1933.

Mr. Franz Radke,

General Counsel,

Lincoln, Nebraska.

Dear Mr. Radke:

I met with the Committee of the Citizens State Bank of Stuart today and they requested me to ask you not to pay any attorney's fees in the bank that were not first submitted to them. I told them that I

would write you about the matter and that I thought you would be pleased to comply with their request.

Very truly yours,

(Signed) James P. Boler
Asst. to the Receiver."

JPB:K
(Written by pen—"See me, Radke. EHL")
(Rubber stamped—"Received Dec. 5, 1933, Dept. of Banking, Receivership Division")

Exhibit 71

"STATE OF NEBRASKA
Receivership Division
LINCOLN

Dear Sir:

You have been recommended as attorney for the legal work in connection with the above failed bank. The rules of the Department require that all attorney fees are to be approved by the General Counsel for the receiver. The policy of the Department has been for attorneys to submit their bills, through the assistant receiver, and then we try to adjust them on as nearly a uniform basis as possible.

Generally speaking, we expect to pay attorneys $35 for a full day spent in court in litigating a suit, $25 a day spent outside of the office but not in court in making investigations or examining wtnesses, etc., $15 for a full day spent in the the office briefing and preparing for trial of cases; for uncontested foreclosure suits, the fee generally is from $75 to $100; trial fee for uncontested cases in county court $15; for taking default judgments in district court, not to exceed $25. When judgments are obtained in any matters turned to the local attorney, copy of judgment must be sent in to this office before the fee will be approved.

While we expect to pay attorneys reasonable fees for their time spent and results obtained, still we feel they should take into consideration the fact that where all the business of a certain bank is turned over to them that same can be handled more economically than where occasional business is forwarded. In addition, as you can well realize, the receiver is always interested in getting as much as possible out of the assets of these failed banks for the depositors.

We are making it a practice to handle all stockholders' and director's liability suits from this office and your employment does not include these two suits.

Referring to stockholders' liability suits, we find that quite often dilatory pleadings by way of motion or demurrer are filed in these suits and that there is no real merit in the same. We should deem it a courtesy on your part if you would notify this office if any such pleadings are filed, and if there is no controversy, if you would have the same overruled or withdrawn and then have time to answer fixed at the first hearing of the court. If there is real controversy in any of these matters,

we shall make special arrangements relative to hearing on the same.

We trust that with this explanation you will find it possible to accept employment for the legal work in this bank. If you are in a position to represent this trust on this basis, will you kindly so advise us.

Yours very truly
F. C. Radke,
General Counsel"

FCR:JN

Exhibit 88

"DEPARTMENT OF TRADE &
COMMERCE
E. H. LUIKART, Secretary
Bureau of Banking
Bureau of Insurance
Bureau of Securities
Bureau of Fire Prevention
Bureau of Receiverships
STATE OF NEBRASKA
Charles W. Bryan, Governor
LINCOLN

April 5, 1932.

A Personal Message
From Governor Bryan:

We have received many, many letters from depositors in failed banks wanting to know when, if ever, they could expect their part of the three million dollars that the banks owed the Bank Guarantee Fund at the time Governor Weaver and a republican legislature broke their pledges and repealed the Bank Guarantee Law.

This letter should bring you hope and cheer. I have been urging and pushing to get this money as fast as injunction suits and lawsuits would make it possible. The bankers and their lawyers are resorting to every delay and technicality to postpone settling this matter until they might get a friendly governor again and have this matter thrown out of court without paying you.

About two months after I came into office in January, 1931, the state won the three million dollar suit in the United State Supreme Court. I immediately arranged to send our agents to each bank and collect the three million dollars and give you your part, but about 400 bankers rushed into court through their attorneys and enjoined me from forcibly taking your money from their bank vaults. We then, through the Attorney General, immediately brought suit in the District Court in Lincoln for a judgment against each state bank for the amount each owed the guaranty fund. Three weeks ago we won that suit and were ready to start out to collect your money but the 400 bankers appealed the case to the State Supreme Court. This case will be argued in the Supreme Court about the seventh of April and I am

very confident the court will uphold the lower court and I will not agree to any kind of another suit or trial and will insist on getting your money to you at the earliest possible moment.

I have greatly reduced the cost of settling failed bank accounts by reducing salaries and reducing the number of people working in the banking department as well as the number of receivers and attorneys, and, as a result, am getting more for the depositors from new failed banks and getting it much sooner than formerly. I believe we will soon get your money for you from the old failed banks if the bankers and their attorneys and those who are now so actively fighting me do not get hold of the state government again and dismiss these bank suits, which the governor has the power to do.

This letter is not a political letter,—it is a business letter about your business. If you are in doubt about the bankers fighting me, ask them. They are fighting me because I am forcing them to pay you. If they defeat me they think they can get out of paying you. I need your help in the democratic primary April 12th so that I can protect your interests.

Yours truly,

(Signed) Charles W. Bryan."

Exhibit 94

"Governor Bryan is now engaged in his campaign for the nomination on the democratic ticket for the United States Senate.

Those of us who have been fortunate enough to serve under the Governor should rally to his support, as this is the only way we have of showing our appreciation of what he has done for us, and our friendship for him. Each member of our office force is contributing ten per cent of one month's salary to a campagin fund, which is to be given as a surprise gift to Governor Bryan. May we expect the same from you, as a member of our field force?

If you care to make this voluntary contribution, please send your check or draft to me, at my office address, marking the envelope 'personal', and I will see that it reaches the proper hands for the purpose intended.

Yours very truly,

CGS:DH (C. G. Stoll)"

Exhibit 95

"4-26-33.

Genoa

Mr. A. B. Hoagland's Report on Farmers State Bank, Genoa given to E. H. Luikart. Then passed on to the governor's office. Complete file including corres. newspaper clippings etc. in connection with A. B. H. & the banks corres. in-re notes etc."

Exhibit 96

"COPY

STOCKHOLDERS AND DEPOSITORS AGREEMENT
AND WAIVER OF WITHDRAWAL RIGHTS

Re: Farmers & Merchants Bank, Ceresco, Nebraska.

WHEREAS, due to deflation in values, and due to the adverse conditions affecting the community in which the named bank carried on its business, and due to a slow and continuous withdrawal of deposits from said bank, said bank now finds it unwise to continue to permit withdrawals of deposits, and

WHEREAS, it is the desire of the said bank, the stockholders of said bank and the depositors and creditors of said bank that it shall continue to operate as a going bank without further depletion of its surplus and reserve.

Now, THEREFORE, in consideration of the mutual promises of the undersigned, Farmers & Merchants Bank, Ceresco, Nebraska, and the depositors and creditors of said bank and in consideration of the recapitalization of said bank in the amount of $20,000.00 and the elimination of all other real estate and other undesirable assets as so set out by the Department of Trade and Commerce, it is agreed:

1. That each depositor in said bank hereby agrees to waive 75 per cent of his deposit, whether checking, savings or certificate of deposit and relinquish same to the Farmers & Merchants Bank, Ceresco, Nebraska, and thereby reduce his claim against said bank to that extent, upon the condition, however, that the stockholders of said Farmers & Merchants Bank agree, and we, the undersigned stockholders of the reorganized Farmers & Merchants Bank, Ceresco, Nebraska, do hereby agree that out of the dividends declared upon our stock, the said 75 per cent so relinquished shall be paid to the depositors, before the stockholders so agreeing, receive any dividends upon their stock; said 75 per cent so relinquished is to be in no way a charge against the Farmers & Merchants Bank or a liability thereof, but it is to be repaid only from the dividends on the stock above described when said dividends are declared and said dividends shall be declared when the consent therefor is obtained from the Department of Trade and Commerce, State of Nebraska; that the remaining 25 per cent of said deposit shall be paid to the depositor as follows, to-wit: No depositor shall withdraw or be permitted to withdraw more than 10 per cent within the first thirty days after the bank reopens, nor in any one calendar month beginning thirty days after date of reopening of said bank more than one per cent of his deposit in said bank as such deposit exists and is shown in the records of said bank at the close of business on December 19th, 1931, less any amount placed in the new capital structure of said bank by said depositor.

2. If prior to the time when full withdrawal of said deposits can be made under the provisions of paragraph 1, the said bank, in the opinion of its officers and directors, shall have become fully able to operate

as a going concern without any restrictions and limitation upon withdrawals of deposits, said restrictions and limitations shall cease. The said bank shall give to all depositors notice of such removal of restrictions upon withdrawals by mailing copy thereof to their last known address.

3. As a further part of the consideration of this contract, it is agreed that the said bank shall not pay interest upon the deposits described in paragraph 1 above after the 19th day of December, 1931, notwithstanding any contract or arrangement heretofore made or existing.

4. It is further agreed, as a material part of the consideration hereof, that the limitations and restriction upon withdrawal of deposits herein made and provided for shall not apply to deposits made in said bank after December 19th, 1931, which deposits shall be subject to check and draft thereon in the usual and ordinary course of business.

5. Except as herein provided, said bank shall continue to operate and conduct its banking business as a going institution in the usual and customary manner."

Exhibit 96-A

"6. This agreement and waiver is made in many copies, all of which shall be considered to be original copies, and it is especially agreed to by all of the parties hereto that the execution of one copy by any of the parties shall be binding as though said party had executed and delivered all of the copies.

Witness our hands this 26 day of Sep., 1932.

FARMERS & MERCHANTS BANK, Ceresco, Nebraska
By Frank W. Wedberg (Signed) President.
Attest: Fred Mostrom (Signed) Cashier

NEW STOCKHOLDERS:

DEPOSITORS:

Village of Ceresco, Nebr.
By Olaf Hagstrem, chairman
(signed)
A. B. Blomstrom, clerk
(signed)
School Dist. 31, Ceresco
Fred Mostrom, Moderator
(signed)
Gus Johnson, Director
(signed)
M. H. Gross, Tres. (signed)"

REPORTER'S CERTIFICATE

State of Nebraska,
Lancaster county, ss:

I, Dorsey D. Baird, shorthand reporter, appointed by State Auditor of Public Accounts, Fred C. Ayres, under House Roll 392, enacted by the 1935 Legislature, to make a record of the proceedings held in connection with the taking of testimony by the Banking Investigation Committee, acting for the State Auditor, in the matter of the investigation and audit of all business transactions and activities of the Department of Banking, including its activities as receiver and liquidating agent, with special reference to the Centralized Receivership, at Lincoln, Nebraska, October 17 to 23, incl., 1935, do hereby certify that among the witnesses appearing before said Committee at said time were Messrs. E. H. Luikart, John C. Byrnes and F. C. Radke, who were duly sworn by Mr. B. Frank Watson, attorney and presiding examiner of the Committee, acting for the State Auditor, to testify to the truth, the whole truth and nothing but the truth; that the examination of said witnesses above named was taken down in shorthand by myself and later transcribed on the typewriter, and the testimony delivered to the Committee.

I further certify that the exhibits appearing hereinbefore are true and correct copies of the originals offered at said hearing.

IN TESTIMONY WHEREOF I have hereunto set my hand, at Lincoln, Nebraska, this 28th day of October, 1935.

(Signed) DORSEY D. BAIRD
Official Shorthand Reporter