

**NORTHERN RAILROAD VS.
CONCORD RAILROAD: S. J.
COURT. MERRIMACK COUNTY,
JUNE TERM, 1870. IN CHANCERY**

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Northern Railroad Vs. Concord Railroad: S. J. Court. Merrimack County, June Term, 1870. In
Chancery by Various

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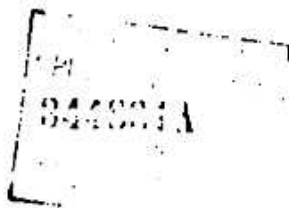
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VARIOUS

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EVIDENCE.

I, James W. Johnson, of Enfield, in the County of Grafton, and State of New-Hampshire, testify and say as follows, in answer to the following interrogatories:

Q. 1. (*By John Y. Mugridge, counsel for the plaintiffs.*) Are you a director and stockholder of the Concord Railroad Corporation? If so, how much stock do you own, when did you purchase it, and when were you elected such director?

A. I am a director and stockholder of said Corporation. I think I own about three hundred shares. About the 20th day of May I purchased the stock. I was elected director, I think, the 24th day of May.

Q. 2. What is your business, and how long have you been engaged in it?

A. I am a produce dealer, I believe they style me,—wool and produce. I have been engaged in it from eighteen to twenty years.

Q. 3. Will you state, as nearly as you can, the extent and amount of said business as done by you, and the sum of money you pay as freight over the Concord Railroad in carrying on such business?

(Objected to as immaterial and otherwise incompetent.)

A. My business directly with the Concord Road is very small; with the through line large, pretty large. I pay for carrying freight over the Concord Road, but don't pay it directly to the Concord Road. That is the best answer I can give.

Mr. Marshall, counsel for the defendants, said at this point, "Hold on; that's enough."

Q. 4. Will you state the amount paid by you to the through line each year, as near as you can state?

A. It varies very much, from fifteen to forty thousand dollars a year; sometimes more, sometimes less; it might be more, it might be less.

Q. 5. Have you not paid them some years more than fifty thousand dollars? and have you not paid them some months as high as fifteen thousand dollars?

(Objected to as leading and otherwise.)

A. I think not, sir.

Q. 6. Have you not paid them as high as fifty thousand dollars any year?

(Question objected to, as before.)

A. I think not, sir.

Q. 7. Have you ever stated any where that you have paid them that sum?

(Question objected to as leading, and upon the further ground that it has been answered twice, apparently, as well as the witness had the means of answering it.)

A. I have no recollection of it. I might have stated that some years my business might have been about fifty thousand dollars a year.

Q. 8. How much of the Concord Railroad stock did you purchase during the eight months preceding the annual election in May, 1870?

A. About five thousand shares for other parties.

Q. 9. Where was said stock principally purchased by you?

A. In Boston.

Q. 10. What brokers in Boston, if any, assisted you in making any of said purchases?

A. Henshaw & Brother, Spencer, Vila & Co., Tower, Giddings & Torrey. That is all I think of.

Q. 11. Is Mr. Tower, of the firm of Tower, Giddings & Torrey, William A. Tower, one of the present directors of the Concord Road?

A. He is.

Q. 12. Give the names of all the persons for whom you purchased said five thousand shares of stock, and the number of shares that each man took out of said five thousand?

A. John H. Pearson, Anson S. Marshall, Frederick Smyth, Moody Currier, Edson Hill, Jo. B. Clark (I think his name is), Natt Head; and there are other men from Manchester, I do n't recollect their names; John A. Spalding (I believe his name is John A.), that is about all I think of; there may be a few other persons. I bought some for my wife, Susan A. Johnson; I have n't spoken of that, I believe. I can't tell exactly the number of shares each man took out of the five thousand; I can give something near, but not exactly. About 1200 for John H. Pearson, I think. I just think of John Kimball; I bought some stock for him. Mr. Marshall had

JOHN W. W.
CLARK
MARSHALL

between 100 and 200 shares, I can't tell which,—about 200, I think; Mr. Kimball 100; Frederick Smyth about 1000; Edson Hill 500 or 600; Natt Head about 100; Jo. B. Clark about 200; Moody Currier 500 or 600; Spaldings, I can't tell, 300 or 400,—I should think about 300,—that is John A. I did the business with him. I might have done some business with William R. Spalding. My wife had 250; James R. Hill about 250. That is about all I think of.

Q. 13. Did or not each of these persons mentioned in your last answer make personal application to you to purchase said stock for them before the same was purchased?

(Question objected to as immaterial, and otherwise.)

A. Most of them did.

Q. 14. Who of them did not make such application before the purchase of said stock? Give their names.

(Objected to, as before.)

A. John Kimball did n't give his order to me; he gave it to Mr. Marshall or Mr. Pearson, or some one; I can't tell how. Two or three men at Manchester. Mr. Clark's order did n't come directly to me; it came through Governor Smyth, or some one, to me. That's all I think of, but what gave me their orders. I can't tell whether General Head gave his order directly to me or not. Yes, he did; he told me to buy him some stock, before I bought it.

Q. 15. With the exception of the persons named in the last answer, state whether all the persons for whom you bought stock, personally requested you to do it, before you made the purchase?

(Objected to because it has been answered by the witness, and as immaterial.)

A. I think they did.

Q. 16. What was the lowest price per share paid by you for any of the stock you purchased? and what the highest price?

(Objected to as immaterial.)

A. I think I bought some stock for \$75; and I paid as high as \$90 for a very little.

Q. 17. What was the average price per share paid for said stock purchased by you?

(Objected to as before.)

A. Between \$84 and \$85.

Q. 18. State whether or not, so far as you know, parties for whom you purchased said stock, as heretofore designated, or any of them, purchased any shares of said stock from other parties, than that purchased through yourself.

(Objected to as before.)

A. I think they did a little.

Q. 19. When did these parties, or any of them, first engage you to purchase stock as before stated? When was the first application made to you, and by whom was it made?

A. I think Mr. Pearson asked me to buy him some stock, the first of any. I think that was in January. I did n't buy any stock till in February, I think; I might have bought a little the last of January.

Q. 20. Did he tell you at that time how much stock to purchase for him? if so, how much?

A. I think he said that he was going to have some money to invest soon. I think 500 shares; 300, 400 or 500 shares he told me to buy for him first, or any amount not exceeding 500 shares. I know he said it was a safe, sound investment.

Q. 21. Did he subsequently give you an order for more stock as an investment, such as the first order? if so, how long after the first order was given, and what amount did he then order you to purchase for him?

(Objected to as immaterial, and otherwise.)

A. He did; it might have been two or three weeks after the first order, perhaps not as long. He then said he would make it up a thousand; he wanted to make up a thousand shares.

Q. 22. When did you transfer said 1000 shares to John H. Pearson, which he ordered of you, as you have stated, for an investment?

(Objected to as before.)

A. I did n't do it all at once, sir; in March, I think. I did not transfer at all. I bought the stock, took the certificates and delivered them over to the parties in blank.

Q. 23. Did you pay for the stock, the 5000 shares, at the time you purchased it?

A. I did, or near that time.

Q. 24. Have you copies of the accounts that you settled with the different brokers, through whom you purchased said stock?

(Objected to as immaterial, and otherwise incompetent.)

A. I have some bills, not copies.

Q. 25. Whose have you?

(Objected to as before.)

A. I have Henshaw & Brother's, and Spencer & Vils's.

Q. 26. Will you produce those that you have, that they may be copied, and said copies be annexed to this deposition?

(Objected to on the ground that the subject-matter inquired about is immaterial, and otherwise.)

(Mr. Marshall, counsel for defendant, instructed the witness to decline to produce the papers or accounts now.)

A. I decline, for I can't produce them now.

Q. 27. Will you produce them before this deposition is closed?

(Mr. Marshall, counsel for defendant, instructs the witness to say that he will produce them hereafter, if he can, and allow copies thereof to be annexed to this deposition, if so advised by counsel for defendant.)

A. I will, if instructed by counsel for defendant to do so, if that is a correct answer, all I can.

Q. 28. Will you produce them if Mr. Marshall, counsel for defendant, advises you not to do so, for purposes aforesaid?

(Counsel for defendant instructs the witness to say that he will be advised by counsel as to whether he will or will not produce them.)

A. My answer is what Mr. Marshall has said.

Q. 29. Shall you decline to produce said copies, if Mr. Marshall, your counsel, advises you not? and are you personally willing to produce them?

(Counsel for defendant objects to the question, on the ground that the witness has already answered it properly, as he understands it, and instructs the witness to say that he will produce them and allow copies to be annexed, if so advised by counsel, after counsel has examined the same.)

(Counsel for the plaintiffs deny the right of counsel for defendant to instruct the witness as aforesaid, and request the Commissioner to rule whether or not the question is proper and should be answered by the witness.)

(Counsel for defendant claims the right to instruct the witness as to the production of papers before he has examined the same, and afterward; and the Commissioner has no authority to rule as to how the witness shall answer or shall not; but is to take such answers as he gives, and note such objections as either counsel shall make to questions and answers, and there his duty ends in that regard.)

(See answer in cross-examination, No. 172.)

Q. 30. Did you instruct any of said brokers in Boston to purchase all the stock of the Concord Railroad that was offered at the Brokers' Board, regardless of price, for you?

(Objected to as leading, and otherwise.)

A. No, sir.

Q. 31. Will you swear that you gave no such instructions as that to a broker in Boston, or that in substance?

(Objected to as leading, and otherwise incompetent.)

A. I have no recollection of it.

Q. 32. Did you give instructions to any person, or state to any person, that you and the persons you represented would purchase one share more than one half the capital stock of the road, if you had to pay \$100 per share for it?

(Objected to as before.)

A. I have no recollection of so stating.

Q. 33. Will you swear you never did?

(Objected to as before, and on the ground that it has once been answered.)

A. To the best recollection I have, I will. I might have said (I was thinking what I said to Mr. Cheney one day) that stock might go to \$100 per share if the old Board went into the market to buy, or some thing of that kind, but never gave any orders to pay over \$90 per share for any stock, to my knowledge, and that only in two instances.

Q. 34. Were you one of a number of persons that combined together before the last annual meeting of the stockholders of the Concord Railroad to obtain the control of said road by the purchase of stock?

(Question objected to on the ground that it is leading, and otherwise incompetent.)

A. I never knew of any combination, nor I was n't combined.

Q. 35. Is that all the answer you can make to interrogatory 34?

A. I was one of the number that voted, and was one of the number elected; was one of the number that voted the new ticket for the present Board, and used my influence to have that Board elected.

Q. 36. Were you one of a number of persons that before said last annual meeting agreed together to purchase stock sufficient to control the election of Directors at such meeting?

(Objected to as leading, and on the ground that the question assumes there was an agreement as stated in the question, which does not yet appear, and otherwise.)

A. I agreed to do all I could to change the Directors.

Q. 37. If you had any associates in said agreement, who were they? name them all.

(Objected to as immaterial, and otherwise.)

A. John H. Pearson, Anson S. Marshall, Natt Head, Moody Carrier, Edson Hill, Frederick Smyth, Jo. B. Clark, William R. Spalding, Isaac Spalding, E. H. Spalding, J. A. Spalding; that is all I think of, there may be more.

Q. 38. When was this agreement between said individuals, for the purpose aforesaid, first entered into, as nearly as you can state?

A. About the 25th of March, 1870, I think, at the time we were considering a proposition from Governor Stearns to sell the stock at \$85 per share, and to have \$100,000 bonus.

Q. 39. Do you mean to state here that there had been no agreement, or combinations, between you and any other persons to obtain the control of the Concord Railroad before the 25th day of March, 1870?

A. No agreements or combination, except private talk that

we would change the management; no combinations, mere private talk. I think it was the 25th of March—would n't be positive—any way I know it was the time we received the proposition from Governor Stearns, and think it was the 25th.

Q. 40. Had it not been talk between you and your associates before the 25th of March that you would make the attempt to control said road, and had not large quantities of stock been purchased before that time for that purpose?

(Objected to as leading, and otherwise incompetent.)

A. There had been talk, but nothing definite had come of it. Some stock had been bought before that time, I don't know for what purpose. It was not for that purpose, as I know of. I supposed the stock would go for a change; people gave me orders to buy stock; said they were not satisfied with the management of the Concord Road, and were going to see if they could make a change. I have heard the change talked of for two or three years. I did n't know that the stock I bought was going for a change. Folks told me, that I bought stock for, that they were going in for a change in the management of the Concord Road. I knew only what they told me. I did n't know, but might have supposed, that it was going for the new Board.

Q. 41. How many shares of stock had you purchased for yourself and your associates, and how many shares did you hold previous to the 25th day of March, 1870?

(Objected to on the ground that the question has been answered substantially several times, and because it is immaterial, and otherwise incompetent.)

A. I should think I had bought from 3000 to 4000, some where in the neighborhood of 3000, I can't tell exactly. I did not own any myself. I mean the 3000 or 4000 were for other persons; it might have been more or less that I had purchased for different parties; this was held at that time.

Q. 42. Was or not said stock purchased by you and your associates for the purpose of obtaining the control of the annual meeting of the road to be held in May, 1870?

(Objected to because it assumes that the witness was an owner of stock, when he has just said, in answer to the previous interrogatory, that he purchased the stock for others, and has two or three times said that he supposed from what they told him that the stock would be voted for a change, and otherwise.)

A. I do n't know, sir, that it was. I supposed from what parties had told me that it would, but I did n't own any stock, and did n't know that it would.

Q. 43. What parties do you refer to in your last answer?

A. Parties that I bought stock for.

Q. 44. Give their names.