THE HANDWRITING ON THE WALL

Is the end in sight? Have the stockholders and employes of the Kellogg Switchboard & Supply Company seen the handwriting on the wall? Will the brazen attempt to hoodwink the Independent telephone interests end in the dissolution of the Kellogg company? On Jan. 1 Messrs. W. W. Dean, engineer, and A. E. Barker, sales manager, severed their connections with the company, and it is rumored that others of the Kellogg force, who are in sympathy with the Independent movement, will soon follow their lead. The Kellogg company seems in sore straits, as a meeting of the stockholders has been called for this month (the first one in two years) and a strong effort will, no doubt, be made to devise some means by which the Independent operators can be fooled and induced to continue to feed fuel to the flame that seeks to devour them. But the stand taken originally by THE TELEPHONE MAGAZINE and followed by the other journals of the trade has put the Independents on the lookout and retribution is coming. Verily, the Kellogg company having departed from the straight and narrow path, have had their feast and the handwriting has appeared upon the wall.

Has anyone noticed during the negotiatons between Japan and Russia that either of these countries has furnished money or material to the other, to be used later to the detriment of the giver? Then why should an Independent telephone operator patronize a manufacturer who is controlled by the arch enemy—the Bell Telephone Company, when it is well known that the profits of this concern will be used in the war fund which is continually being used by the Bell Telephone Company in its efforts to disrupt Independent telephony? Buying of the Kellogg company is treason; it is furnishing ammunition and sympathy to the enemy in time of war.

"JUST LIKE GETTING MONEY FROM HOME."

THE BELL COMPANY: "YOU HOLD HIM AND I'LL DO THE REST."

Kellogg Case Is On Trial.

Action in court has at last begun. When it will end no man can tell. The minority stockholders of the Kellogg company and the Bell interests are pleading their separate causes before Judge Mack, of the circuit court of Cook county, Ill.

A week has already been consumed in the taking of testimony and long-winded argument and the verbal battle still rages.

The action is on the demurrer, and is the opening scene of a legal drama which may, if precedents are considered, occupy the stage for many years to come.

The Bell company will use every en-

deavor to win the suit, and strengthen themselves in their monumental exhibition of nerve, in forcing upon the Independent telephone interests a concern that is backed by the Bell company, and a deal that is designed solely for the purpose of extracting money from the Independent operators, which can be used in their continual warfare on these same interests.

The Kellogg deal is one of the last cards that the Bell company had left, and it will not lose the trick if bluff, bluster and shady business methods can compel the opposition to give up. But the game will not work; the Independent interests are alive and will see that this "four flush" of their old enemy does not scare them.

To the Independent operators of the country, we say, buy from known Independent concerns; see that your money goes to people who have your interests at heart, in common with their own; not to a concern that is continually trying in every way to get you off the track so that they can again extort immense tariffs from the people as they did before you entered the field. Watch every move that they make. You are sure of your ground. In the language of the late Hon. Marcus A. Hanna, "stand pat."

Another Lawyer Gets Injunction.

Attorney Charles A. Brown, with offices in the Monadnock building, Chicago, refused to pay the unreasonable rental charges of the Bell Company for a private exchange and installed one of Independent make, connecting it to the Bell system of the Chicago Telephone Company.

An injunction restraining the company from interfering with the service has been obtained and Mr. Brown now talks over Bell lines through Independent transmitters.

This is the second Independent exchange to be successfully operated connected directly with the Bell system in Chicago, the other being in the offices of Beach & Beach, attorneys with offices in the Ashland block.

It is to be hoped that a precedent will be established by future legal developments which will bring forth a verdict favoring the Independent cause. Mr. Brown claims to have an abundance of legal reasoning at hand and gives assurance of victory.

REORGANIZATION PLAN.

Details of the reorganization plan of the Michigan Telephone Company are set forth in a circular to be sent to all bondholders. The property is taken over by the bondholders, who, in connection with raising the additional money necessary to provide for improvements planned, receive all the securities of the new corporation, excepting compensation to the bondholders' committee and underwriting syndicate, paid in common stock.

The entire common stock will be made subject to a voting trust agreement, the voting trustees being N. W. Harris of Chicago, W. C. McMillan of Detroit, Isaac Sprague and F. A. Farrar of Boston, and Allen B. Forbes of New York. A large interest has been taken in the new company by prominent men in Michigan, among them W. C. McMillan, F. J. Heicker and T. H. Newberry of Detroit, who will be actively represented in the management and on the directory. The company has authorized a sufficiently large ultimate capital to enable it to meet the growing demands of business and perfect the improvement already under way. N. W. Harris & Co. are the syndicate managers.

The reorganization provides for the formation of a new company to be known as the Michigan State Telephone Company.

Rumor has it that Omaha is getting interested in Independent telephone matters. It's not a great distance between interest and installation.

"There is a great deal of talk about the competition by Independent companies," says an eastern Bell organ, in speaking of the financial outlook for the monopoly. There is foundation for a lot more talk of the same kind in the west and strong structures are built upon it.

Several annual meetings of western mutual telephone companies overflowed and adjourned to "the opera house," the largest meeting places in the towns. We

Telephony.

THE AMERICAN TELEPHONE JOURNAL

Comprising Telephony, American Telephone Journal, Sound Waves, Telephone Magazine and The Telephone

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NOTICE TO ADVERTISERS

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CHICAGO, SATURDAY, FEBRUARY 27, 1909.

CONTENTS.

The Kellogg Decision in Favor of the Independents.

Every telephone man, and all officers and stockholders of Independent telephone companies, will be well repaid for the time they take to carefully read the opinion of the Illinois Supreme Court, which declares void the sale of Milo G. Kellogg's stock to representatives of the Bell company, for the purpose of stifling competition in the telephone business, and provides for its restoration to him. In its affirmation of the right of the minority stockholders to receive this protection from the courts, it sets forth an act of justice whose consummation is most cheering; and in its discussion of questions of fact the opinion is of great interest because it corroborates the judgment of many thoughtful men who have condemned the monopolistic practices of the Bell company. This opinion confirms the previous decision of Judge Windes that the Bell purchase of Mr. Kellogg's stock, which was sold by his attorney without his knowledge, and never consented to by him, is void. In its specification of the method by which he may re-acquire his stock, and again assume control of the business of the Kellogg Switchboard and Supply Company, the Supreme Court, again affirming the decision of Judge Windes, is not only definite, but provides for a minimum delay. Attorneys believe that the decision leaves no loophole for further litigation and that the Kellogg company will be freed from Bell domination, and ready to go on with its business as an Independent manufacturer, with Mr. Kellogg in charge as president, within a very few weeks.

In the discussion of questions of fact the court settles any doubt as to the status of the present management of the Kellogg company, if, indeed any has existed, by holding that the really adverse interests in the litigation were the American Telephone & Telegraph Company (the Bell company) and those seeking to maintain the independence and the integrity of the Kellogg company; and that all persons opposed to the plaintiffs, including De Wolf, the manager, were identified in interest with the Bell company. This clearly upholds the contentions of the Independent associations, and of TELEPHONY, in condemning as unsafe any relations between Independent operating companies and the Kellogg concern during the entire period of litigation.

Furthermore, to clinch the proposition that such relations were in fact dangerous to the operating companies, the court says that it was proved that the interest of the Kellogg company, at the time of the transfer, was identified with the interest of the Independent exchanges; and that "the continuance in

business of the Independent exchanges throughout the country depended upon the continued existence of Independent manufacturers, of whom they could purchase equipment. If the Independent manufacturers should go out of business, or pass under control of the American (Bell) company, the Independent exchanges would be reduced to the alternative of going out of business or becoming subsidiaries of the Bell company."

This judicial opinion, backed by the authority of the Supreme Court of Illinois, is no less applicable to the past condition arising from the Kellogg affair than as an urgent warning to all operating companies to beware, for their own ultimate safety, of weakening the strength of Independent manufacturers by patronizing the Western Electric Company, the Bell factory, which is now endeavoring to do in the open what its owners failed to do under the cover of a corporation which they had secretly purchased.

The court not only discusses the relations of the Kellogg company to the Independent operating companies, but furnishes a valuable confirmation of popular opinion in its statement that in its purchase of the Kellogg stock the Bell company was not actuated by sympathy on account of alleged financial difficulties. The court says: "We cannot conceive of the American (Bell) company rushing in to aid a rival in business"; and, again, quotes from the testimony of Mr. Fish, then president of the A. T. & T. Co., "The ultimate motive is everywhere and always the advantage of the A. T. & T. Co." Henceforth, when a representative of the Bell factory seeks the business of an Independent company, let him bear in mind that the statement that his act is but a covert step toward eventual Bell domination of the local operating company does not rest merely upon the authority of an Independent journal, nor of an Independent manufacturer; it is founded upon a statement made under oath by the president of the corporation which owns a controlling interest in the Western Electric Company.

This whole opinion is interesting. It contains a good deal of live matter of general application. Take this quotation, following a resumé of Mr. Fish's contention that his company sought to prevent competition by Independent companies because they charge unwarrantably low rates:

"Mr. Fish also testifies that 'the American (Bell) company is a dividend paying company. Its object is to make dividends as large as possible. While he does not say so, it is not impossible that the desire to make dividends as large as possible may also be a factor which has much to do with the price which Mr. Fish thinks any well regulated company ought to charge the public for telephone service."

Referring to two attempts made by the Bell interests to purchase the Stromberg-Carlson Company, made subsequent to its illegal acquisition of the Kellogg stock, which were frustrated, in one case by Mr. Stromberg's refusal to sell, and in the second by the prompt and commendable action of the attorney-general of New York state, acting on information furnished by Mr. B. G. Hubbell and others, the court says: "If a controlling interest in these two large Independent companies could have been obtained by the American (Bell) company, it would have seriously crippled Independent exchanges throughout the country."

It is to be remembered that these utterances are not made to promote any private interest, but are henceforth, in Illinois, a part of the legal records which may determine action of the courts of that state in future cases. They may well be given thought by officers of telephone companies who, either for the sake of equity, or for continued independence and financial profit, seek guidance for their own actions.

Considering the case broadly, it must stand as a monument to the justice of Independent principles and the loyalty, integrity, courage and ability of Independent telephone men. Messrs. Kellogg, Dunbar, Miller and Burlingame deserve the congratulations and good wishes of all Independents. And while TELEPHONY has vigorously opposed the Kellogg company when it was under control of the Bell interests, from now on its efforts to co-operate with Independent operating companies in advancing the art and business of telephony will receive neither more nor less ready and cordial support than that extended to the good works of other Independent manufacturers.

The Cost of Sleet Storm Damage.

In for the larger part of the country, aerial wires are, during the fall and winter months, subject to the sudden destructive action of sleet storms. Losses vary greatly with the type and condition of construction, but few companies whose plants are in a territory where storms are severe escape without losses which make a rather substantial showing on the wrong side of the books.

Although the necessity of providing for these repairs in all financial plans is recognized, practice varies among different companies in estimating probable losses. And while any estimate for the future in such an uncertain matter as this is likely to be very far indeed from correct, it is well to have something better than local experience as a basis of forecasts. For this reason the collection of data on storm losses in Wisconsin by the Public Utilities Commission is a commendable project of interest to all telephone managers; the figures will be decidedly useful in connection with the estimation of the proper depreciation reserve.

Handling Directory Advertising Properly.

Complaints have recently been made by business men in several cities because of the indiscriminate placing of advertising matter with subscribers' lists, in telephone directories, making the handling of the books very inconvenient.

This trouble has been traced to the leasing of space in the directory to an advertising company, which works the privilege for all it is worth. This shows the necessity for a telephone company to carefully consider the makeup of its directory and limit the advertising matter, not so much as to amount, but more particularly as to space, location and typographical arrangement.

While directory advertising is a source of revenue which makes it well worth developing as a by-product, the restrictions upon its uses are very definite. The companies which were earliest in the field, and most carefully handle this proposition, such as the Columbus Citizens' Telephone Company, which has a model directory, have given careful consideration to these features.

Kellogg Case Decided for Independents

The famous case of Dunbar et al. vs. the American Telephone & Telegraph Co. started nearly six years ago, to determine the ownership of the Kellogg Switchboard and Supply Company, has been decided in favor of the plaintiffs. This is a complete and final defeat of the Bell interests, involving the restoration to Milo G. Kellogg of the stock sold, illegally, as shown in the present decision, by his attorney, to representatives of the Bell company. From the time of the actual restoration of this stock, which will take place in a few weeks, by the court's decree, the Kellogg company will again be in the ranks of Independent manufacturers, as indeed it is now, in all but a technical sense.

This decision closes a period of bitter warfare which has been waged by the Bell company, through its holding of the Kellogg stock, upon the Independent interests in general. The purchase was concealed by the Bell company, and the Kellogg company, in the months immediately following the sale, took important contracts from Independent companies, which it would not have received had its true status been known. After the sale was made known to Mr. Kellogg, and subsequently to Mr. Dunbar and other minority stockholders, the whole transaction was made public by TELEPHONY and the *American Telephone Journal,* and also was discussed by National and State Independent telephone associations. Independent operating companies saw the danger of dealing with the company while it was controlled by Bell interests, and it lost the patronage of hundreds of its old customers. Up to the time of the exposure of the sale the management caused the concern to masquerade as Independent, and afterward its agents continued to claim that it would do nothing to endanger the interests of its Independent customers. This policy has led to repeated discussions, as have also certain of its acts which, in so far as they have affected other truly Independent manufacturing companies, have partaken more of the characteristics of trade warfare than of legitimate competition. Happily, this stage of its existence will pass away as a result of the decision.

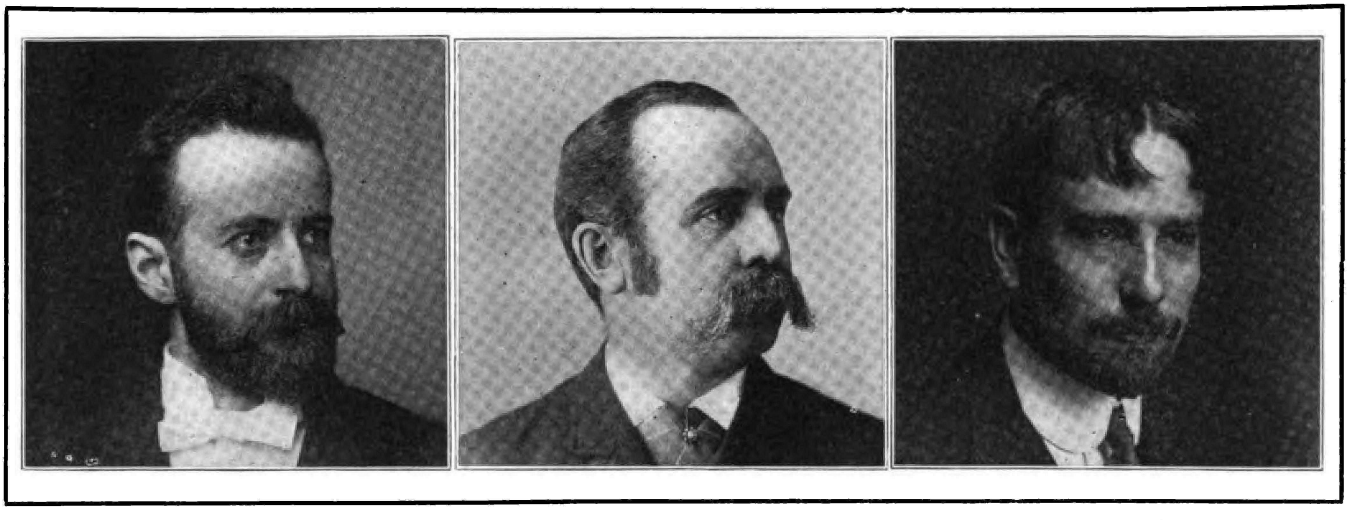
The opinion of the judges of the Illinois Supreme Court, although long, is so strong in support of some of the guiding principles of Independent telephony, and so illuminating in reference to the Kellogg case, that TELEPHONY believes it can find no material more interesting, or more valuable to its readers, and prints it in full. It puts clear emphasis on the necessity for Independent operating companies to patronize strictly Independent manufacturers, if they will themselves survive. It is noteworthy that the decision is based upon principles of law and public policy which involved no question of agency in the stock transfer.

On account of this case being one indirectly involving the interests of so many operating companies, the decision is no less an occasion for congratulating them than for praising the devotion to the Independent cause and the courage and persistency of Mr. Dunbar and Mr. Kellogg, who have steadfastly fought this case through the courts of Illinois against one of the most powerful corporations of the country. Henry S. Robbins and Charles H. Aldrich, attorneys for the plaintiffs, merit the highest praise for their able representation of the plaintiffs in one of the most difficult struggles which have ever come before the courts of Illinois.

Mr. Kellogg, through the long struggle, has not only co-operated with the minority stockholders in regard to the litigation, but has, at great expense, maintained a staff of experts who have made important contributions to the art of telephony, continuing work which would otherwise have been abandoned on account of the disintegration of the engineering force of the old Kellogg company, which took place under Bell control. The results of their work, on which have been granted important patents, will be available to the Kellogg company, and hence to Independent operators, when Mr. Kellogg again takes charge.

Following are a brief outline of the history of the case, and statements from Mr. Dunbar, Mr. Kellogg, Mr. Miller and Mr. Robbins, attorney for the plaintiffs. The opinion of the court appears in full elsewhere in this number of TELEPHONY.

The decision of the Illinois Supreme Court Friday, Feb. 19, 1909, in the case of Francis W. Dunbar et al. v. The American Telephone & Telegraph Co. et al., concludes a long and bitterly contested litigation, the result of which is to free the Kellogg Switchboard & Supply Company from the control of the Bell telephone interests and to restore to Mr. Milo G. Kellogg his stock, which the American Telephone & Telegraph Company illegally sought to acquire.



Mr. Francis W. Dunbar. Mr. Milo G. Kellogg. Mr. Kempster B. Miller.

The conditions making possible the transactions which led to the bringing of this suit are briefly as follows:

Mr. Milo G. Kellogg, president of the Kellogg company and owner of nearly two-thirds of its issued stock, was forced by severe illness to resign his active management of the Kellogg company and to depart for California in November, 1901. He resigned his management to the vice-president of the company, Mr. Wallace L. DeWolf, and gave him a power of attorney, and acting under it Mr. DeWolf, on January 4, 1902, sold to Mr. Enos M. Barton, president of the Western Electric Company, who, as it finally appeared, acted for the Amer-

ican Telephone & Telegraph Company, all of Mr. Kellogg's stock as well as his own and that of others. Mr. Kellogg was not advised of this sale, or attempted sale, until six months thereafter. Mr. Kellogg was the first of the stockholders to know of this sale and during the interval between the sale and his acquiring knowledge of it the Kellogg company had been masquerading as an Independent concern. Upon learning of it, and as soon as his health would permit he took active steps to recover his stock, and when he came to the conclusion that his efforts might not be successful, he allowed knowledge of the sale to be made public, thus protecting the interests of the Independent operating companies.

The original bill in this case was filed in June, 1903, by Francis W. Dunbar, Kempster B. Miller, George L. Burlingame, and other minority stockholders in the Kellogg company. These stockholders contended that a purchase of a majority of the stock of the Kellogg company by the American Telephone & Telegraph Company tended to suppress competition and create a monopoly and was therefore illegal and void. To this the American Telephone & Telegraph Company replied that the bill of the minority stockholders was insufficient to warrant granting the relief prayed for. Upon this sole question, namely, the sufficiency of the bill filed by the minority stockholders, the case was heard in the Circuit Court of Cook County, Illinois, by Judge Mack, who held the bill insufficient. An appeal was then taken to the Branch Appellate Court of the same county and there Judge Mack's decision was affirmed. The minority stockholders then appealed to the Supreme Court of Illinois and this court, in an opinion handed down October 23, 1906, reversed the two lower courts and established as the law of this case that a foreign corporation, such as the American Telephone & Telegraph Company, doing business in Illinois, had no greater powers than a domestic, or Illinois, corporation and that an alleged purchase by the said American company either in its own name or in the name of others, of a majority stock holding in a rival company for the purpose of controlling it and thus stifling competition, was illegal and absolutely void—not merely voidable.

The law of the case having thus been once and for all determined by the court of last resort, it remained to prove the allegations of fact contained in the bill. Accordingly the case was remanded to the Circuit Court of Cook County and all the proofs were produced before Judge Windes of that court. A number of months were consumed in adducing these proofs. The case was then fully argued before Judge Windes, some three days being devoted to the argument, and in a very able opinion he found the allegations of the minority stockholders' bill substantially proven and, under the law as determined by the Supreme Court, ordered a decree entitling the minority stockholders to all the relief prayed for. The decree of Judge Windes was entered in February, 1908, and awarded the minority stockholders a permanent injunction perpetually enjoining the American Telephone & Telegraph Company and its agents from, in any manner, interfering with the management or control of the Kellogg company. The decree also ordered that the said American company surrender the Kellogg certificates of stock illegally acquired by it, to their rightful owners and that the purchase price of said certificates be returned to it. Also, that should the said American company refuse to surrender said certificates, they would be cancelled and new certificates issued.

The American Telephone & Telegraph Company then carried the case to the Branch Appellate Court and that court, while finding the alleged facts substantially proven, disagreed with Judge Windes on the relief to be granted to the minority stockholders and rendered an opinion which was a half victory and half defeat.

The minority stockholders then carried the case to the Supreme Court of Illinois, and on Friday, February 19, 1909, the said court reversed the Branch Appellate Court, sustained Judge Windes, and affirmed his decree in its entirety.

THE LEGAL BEARING OF THE CASE.

The significance which the decision in the Kellogg case may have in future relations of telephone companies is apparent from reading the following letter from the attorney for the plaintiffs:

February 23, 1909.

Mr. F. W. Dunbar.

Dear Sir:—I am of the opinion that under the decision of the Illinois Supreme Court in the suit of the minority stockholders of the Kellogg company against the American Telephone and Telegraph Company, any stockholder of an Independent telephone or supply company of Illinois may now prevent the Bell company from purchasing, either directly or indirectly, the control of such Independent company. This decision, while not controlling in the courts of other states, will, I believe, go far towards making this also the law elsewhere. Respectfully yours,

Henry S. Robbins.

STATEMENT OF MR. KELLOGG.

The Editors of TELEPHONY:

In response to your request for some statement from me concerning the decision of the Supreme Court just rendered in the litigation concerning the control of the Kellogg Switchboard and Supply Company, I will state that such decision is what I have always confidently believed would be the final outcome of the litigation, notwithstanding certain decisions in the lower courts to the contrary. In a statement which I published in 1907, I stated as follows:

"There seems to be no question but what in view of the decision handed down by the Supreme Court, . . . the final decree will be that I never ceased to be the owner of my original stock and am now the owner of it."

The decision of the Supreme Court sustains practically all the allegations of the bill of complaint of the minority stockholders and gives practically all the relief that was asked for in the litigation.

In conclusion, I will say that the company will be managed in the future as an Independent telephone manufacturing proposition, along the same lines of high grade apparatus and progressive ideas which characterized it from its organization while I was formerly in its control, and that it will be impossible for adverse interests to regain control of the Company.

Milo G. Kellogg

To the Editors of TELEPHONY:

STATEMENT BY MR. DUNBAR.

The material facts concerning the Kellogg-Bell litigation and the Kellogg minority stockholders' participation therein are so completely recited in the accompanying decision of the Illinois Supreme Court, that little need be added by me. It was on or about March 1, 1903, that I first learned that an attempted sale of the Kellogg stock had been made. This information was communicated to me at the instance of Mr. Milo G. Kellogg and at a time when he had become convinced that he might not succeed in his attempts to buy back his stock. As soon as I was advised of the situation, I sought legal advice, and then believe that Mr. Kellogg's stock had been unlawfully acquired by the American Telephone & Telegraph Company, I decided to bring suit as a minority stockholder for the recovery of the stock to its rightful owners. In gathering together material for the preparation of the bill, as well as at all later times, I received Mr. Kellogg's hearty co-operation and invaluable assistance.

Shortly before filing the bill in June, 1903, I advised Mr. Kempster B. Miller, Mr. George L. Burlingame, and other minority stockholders of the Kellogg company, of the then existing situation and of my intention to bring suit. Up to this time, none of the employees of the Kellogg company, save myself, and none of the officers and directors, save those who participated in the attempted sale of the stock, had been advised that the controlling interest of the Kellogg company had been transferred. Messrs. Miller and Burlingame heartily

approved my proposed action, joined me in the suit, and have constantly co-operated with me in our attempt to preserve the rights of Independent telephone interests in the long and hard fought litigation now terminated by the Illinois Supreme Court.

Francis W. Dunbar

STATEMENT BY MR. MILLER.

When asked for his view of this important decision, Mr. Miller wrote the following:

To the Editors of TELEPHONY:

Dear Sirs:—You have asked me for a statement regarding the decision just handed down by the Supreme Court of Illinois in relation to the ownership of the majority of the stock of the Kellogg Switchboard and Supply Company. I have not much to say on the subject. I am glad of course that this long controversy is at last at an end, and thankful that the outcome is as it is. I believe that this is a notable victory for the Independent telephone interests.

Sincerely yours,

Kempster B. Miller.

The Independent Situation in Boston.

Newspapers in Boston, Mass., recently printed the following:

Vice-President Bernard M. Wolf, of the Metropolitan Home Telephone Company, today issued a statement declaring the order passed by the board of aldermen in 1906 to be legal, despite the action of Superintendent of Streets Emerson, in refusing to allow that corporation to open the streets for the purpose of laying wires beneath the surface upon the grounds that the aldermen's permit was illegal. Mr. Wolf says:

"The action on the part of the city, in declining to grant the permit, was taken by Superintendent of Streets Guy C. Emerson, at the direction of Mayor Hibbard, who informed Mr. Hayes, the attorney for the company, that he (Mayor Hibbard) acted entirely because of a letter from Mr. Babson, the corporation counsel, stating that the order of December 28, 1906, was illegal.

"Mr. Babson had previously stated this in 1906, in a communication to the mayor, which was presented by Mayor Fitzgerald to the board of aldermen, together with his veto; and it was at that time stated by Mayor Fitzgerald that the Hon. Richard Olney had written an opinion, either to the American Bell Telephone people or to Mr. Fitzgerald, in which he (Olney) had stated that the order was illegal.

"The attorney for the Metropolitan company demanded at that time that either the mayor or the Bell company publish this opinion; which demand was absolutely ignored, and since that time the Metropolitan Home Telephone Company has endeavored to learn what was in the opinion of Mr. Olney (if one was ever rendered), but unsuccessfully.

"The Metropolitan thereupon asked Andrew J. Bailey, former corporation counsel, to express an opinion on the order, which he did, declaring it entirely legal and giving at great length his reasons.

"Within the last year the company asked Prof. James Barr Ames, dean of the Harvard Law School, to write an opinion on the validity of the order, especially requesting Professor Ames to express his opinion either for or against the legality of the order. After very careful consideration, he rendered a written opinion completely sustaining the validity of the order and the right of the company to build and operate a telephone system under the streets of the city.

"Unless it should be true that there does exist an opinion by Richard Olney, as above, the telephone company has yet to learn of any lawyer (besides Mr. Babson) who has given careful attention to the matter who says that this company is not entitled to go ahead with the construction and operation of the plant."

The corporation has already taken the matter into the supreme court.

A Louisville Editorial on the "Two Telephone Proposition."

An editorial in the Louisville, Ky., Post of Jan. 2 contains, under the heading "Telephone rates," the following:

"The power to regulate charges for service, while disputed by public service corporations, has, we believe, been generally sustained by the court. It is entirely practicable to regulate Cumberland rates, and while it might involve some litigation, the litigation would result in the vindication of the power of the legislative department of the city of Louisville to regulate these rates on a reasonable basis.

"Some telephone subscribers object to two 'phones. They say it is both an annoyance and an expense.

"We do not know how many patrons are patrons of both companies. A business house can do without two 'phones, but it cannot do without any. If, having one, a business man, a professional man or a private citizen puts in the other, he does it for advantages which he secures. He reaches a larger number of persons through these two 'phones than he would reach in ten years by a consolidation of the two services on anything like a basis monopolies are apt to fix.

"The objection to two 'phones is largely nebulous, whereas the benefits are actual, practical and palpable. As to the loss to the community, that is purely imaginary.

"The capital is here invested and if it is not utilized that capital will be lost. There is no obligation upon anybody to use the facilities furnished by two companies. It is a matter of choice. He can take one or the other, or both. The man who pays for two 'phones, as a rule, does it to get double service.

"If there were but one afternoon paper in Louisville we doubt if either the subscribers or the advertisers would be benefited. We are confident, on the other hand, that both are better served through competition. The advertiser reaches a larger public and his combined rate is probably not more than one newspaper occupying the whole field would be justified in exacting for a smaller aggregate circulation.

"So is it with the telephone companies. The subscribers reach a larger public, and while some of the connections are duplicated, a large part of them is not duplicated.

"The Evening Post has no antagonism to the Cumberland and no special consideration for the Home. We are looking at this matter from the standpoint of the public. We urge the modification of the contract with the Home because we believe some modification is essential to keep it out of the hands of the Cumberland.

"To summarize what we have said, we would so shape legislation as to establish competition as the best means of securing the best service. Then we would, through the general council, so regulate rates as to prevent extortion."

Council Raises Independent Rates to Strengthen Competition at Frankfort, Kentucky.

In order to obtain more active competition between the East Tennessee and Home Telephone Company, the Frankfort, Kentucky, City Council, on Feb. 8, gave first passage to an ordinance fixing the maximum rate for business-house telephones at $2.50, and for residences at $1.50 per month. This is a reduction for the East Tennessee from $2.75 and $1.65, an an increase for the Independent company from $1.67 and $1.00. The latter company decided it was losing so much at its inforced present rate, that it would have to go out of business, unless relieved.

The Kellogg Decision

Mr. Justice Vickers delivered the opinion of the court:

Francis W. Dunbar and others, minority stockholders of the Kellogg Switchboard and Supply Company, (hereinafter called the Kellogg company,) filed a bill in equity in the circuit court of Cook county against the American Telephone and Telegraph Company, (hereinafter called the American company,) the Western Electric Company, (hereinafter called the Electric company,) the Kellogg Switchboard and Supply Company, Milo G. Kellogg, Wallace DeWolf, and others, for the purpose of having a sale of the majority of the stock of the Kellogg Switchboard and Supply Company made by Milo G. Kellogg and others to the American company, set aside and held for naught and for an injunction and other relief. Milo G. Kellogg answered the bill, in which he substantially admitted all its averments, and filed a cross-bill, in which he repeated, with some variations and additions, the substantial averments of the original bill, and prayed that the pretended sale of the capital stock held by him in the Kellogg company should be adjudged illegal and void and be canceled and set aside. Some of defendants below answered both the bill and the cross-bill, while others demurred to both. The demurrers were sustained and the bills both dismissed for want of equity. This decree was affirmed by the Appellate Court, but upon further appeal to this court the decree sustaining the demurrer and dismissing the original bill was reversed, while the decree dismissing the cross-bill on demurrer was affirmed. This court remanded the cause to the circuit court, with directions to proceed in conformity with the views of this court expressed in its opinion. Our former opinion is reported as Dunbar vs. American Telephone and Telegraph Company 224 Ill. 9. Upon the reinstatement of the cause in the circuit court most of the defendants who had not already filed answers, answered the bill. Those not answering were either mere formal parties, or parties whose interests were represented and protected by the answers filed. After the issues were made up the cause was heard in the circuit court, the Hon. Thomas G. Windes presiding, upon oral evidence taken in open court, except certain portions of the testimony which was submitted in depositions. The findings of the circuit court were that the allegations of the bill were substantially true, and by its decree the purchase of the stock of the Kellogg company by the American company was declared void and of no effect and the relief granted was such as to court deemed equitable, proceeding upon the assumption that the title to the stock of the Kellogg company had never passed out of the persons who made the alleged sales to the American company. The scope of the decree of the circuit court, both in its findings and its equity-adjusting features, will be more specifically stated hereinafter. Upon a writ of error being sued out of the Appellate Court, that court, while agreeing in the main with the circuit court in its findings, disagreed with the relief granted, and accordingly reversed the decree and remanded the cause to the circuit court, with directions to enter a decree in accordance with the specific direction expressed in the opinion of the Appellate Court. The complainants in the original bill have appealed to this court, and here insist upon a reversal of the Appellate Court and all affirmance of the circuit court. Milo G. Kellogg has assigned cross-errors, as have also the American company and Enos M. Barton. The cross-errors assigned by Kellogg do not materially differ from the errors assigned by appellants, while the cross-errors assigned by the American company and Barton bring in question the decree of the circuit court.

Upon the former hearing of this cause in this court the substance of the bill filed by appellants was set out in the statement preceding the opinion. Since the American company and others question by cross-errors the sufficiency of the evidence to support appellants' bill, it will be necessary to re-state the essential features of the bill upon which the cause was finally heard.

Appellants allege in their amended and supplementary bills that the Kellogg company was an Illinois corporation, organized for the purpose of manufacturing, selling, hiring, leasing, or otherwise procuring, owning and disposing of, electric telephone and telegraph instruments of all kinds; that the capital stock consisted of 5000 shares, of $100 each; that Wallace L. DeWolf was the president, E. H. Brush the vice-president and Leroy D. Kellogg the secretary and treasurer of the company; that upon its organization Milo G. Kellogg became the principal stockholder, owning about two-thirds of the capital stock. It is further alleged that the American company was a corporation organized under the laws of New York, and was doing business in this state and most of the other states of the Union; that said last named company had become the owner of the business and stock of the American Bell Telephone Company of Boston, and that F. P. Fish was its president; that the American company was the owner of a large amount of stock of numerous licensee or subsidiary telephone companies and operated a large system of telephone and telegraph lines in the United States; that said American company owned a majority of the capital stock of the Electric company; that said corporation and the Electric company formed what is known as the "Bell Telephone Monopoly," which for many years had exclusive control of the business in the United States as to the use of both telephone and telegraph apparatus, due to the numerous patents owned and controlled by said American company; that the president of the American company is also a director of the Electric company; that the Electric company is an Illinois corporation, engaged in the manufacturing, buying and selling of electric apparatus used in the construction, operation and maintenance of telephone and telegraph systems; that E. M. Barton is president of said Electric company, and that he is dominated by Fish and the American company through the latter's control of the board of directors of said Electric company. It is further alleged in the bill that telephones, switchboards and instruments and other apparatus of the Independent telephone companies throughout the United States have been manufactured by a number of companies the most important of whch are the Kellogg company and the Stromberg-Carlson company, both of which are located in Chicago, and each of which exceeds in capacity the business of any other telephone manufacturing company in the United States except the Electric company; that the business of the Kellogg company exceeded that of the said Stromberg-Carlson company in supplying switchboards and other apparatus for the larger Independent exchanges throughout the country; that in consequence of the conditions and circumstances thus stated, it is charged in the bill that in order to stifle competition and create a monopoly in itself and its licensee companies and to enable them to exact unreasonable and excessive rates and charges, the American company conceived the illegal purpose of acquiring at least two-thirds of the stock of the Kellogg company, and through said ownership to elect and maintain a board of directors which should not act in the real interest of the Kellogg company but in the interest of and subservient to the interest of the American company, and thereby free that company and its licensees from the competition of the Kellogg company and Independent exchanges. The bill charges, on information and belief, the method that said American company contemplated adopting to accomplish its unlawful purpose. The bill then sets out the crcumstances under which the American company acquired, by purchase from DeWolf, an agent of Milo G. Kellogg, 3,307 shares of the Kellogg company stock, and the acquirement, with like unlawful purpose, of 1,004 shares of stock from other stockholders in the said Kellogg company. The bill charges that these purchases were made by Barton, president of the Electric company; that the money to pay for said stock was furnished by the American company, and that the stockholders of the Kellogg company of whom these shares were purchased by Barton were ignorant of the fact that they were selling to the American company. It is charged that by the contract entered into between DeWolf and Barton in regard to the sale of the Kellogg shares, Barton agreed to pay $45 per share in cash upon the delivery of the certificates, and also to pay, in addition, per share, the proceeds of any and all bills and accounts receivable due and owing to said Kellogg company on December 1, 1901, amounting to $323,248.09, as the same are paid and collected; that it was also agreed that the business of the Kellogg company should be carried on in the usual manner for the space of one year; that these transactions were all consummated while Milo G. Kellogg was in California on account of ill-health and without his knowledge or personal participation therein, and that as soon as he learned of said sale he heartily disapproved thereof and sought in every way to re-purchase his stock, in order that the Kellogg company might be managed in the interest of its stockholders and not to be used as an instrument to create and perpetuate in the American company a monopoly of the telephone interests; that Barton and Fish, while willing to sell a portion of said stock, insisted upon retaining two-thirds thereof. The bill further charges a series of acts done by Barton through the officers and agents that had been placed in control of the Kellogg company through the control it had acquired of a majority of the Kellogg company stock, all of which acts are charged to be in furtherance of the illegal purpose of the American company to disorganize and dissolve the Kellogg company. The prayer of the bill was that a temporary injunction might issue, which upon final hearing, should be made perpetual, restraining the American company, Barton, Fish and the Electric company from selling or otherwise disposing of the shares of stock which they held in the Kellogg company, aggregating 4,311 shares; that a meeting of the stockholders be convened, under the direction of the court, for the election of a new board of directors, and that the holders of the stock in question be enjoined from voting in said meeting any of said shares of stock, and that the said American company, Barton, Fish, the Electric company, and all of their officers and agents, be enjoined from attempting to dissolve or otherwise interfere with the interest and business of the Kellogg company, and that the sale of the shares of stock in the Kellogg company to the American company be set aside and held for naught.

By a second supplemental bill filed by Francis W. Dunbar, Kempster B. Miller and George L. Burlingame it is charged that in January, 1907, the meeting of stockholders of the Kel-

logg company was held in Chicago; that all the stock of said company was represented at the said meeting either by owners or proxies, and that Milo G. Kellogg attended said meeting and nominated for election a board of directors consisting of Dunbar, Miller, Burlingame, Milo G. Kellogg, Leroy D. Kellogg, Edwards and James G. Kellogg, and that one Charles S. Holt nominated the following board of directors: Buckingham, Brush, Hanford, Dommerque, DeWolf, Edwards and Coffeen; that votes were cast for the directors as above named by Milo G. Kellogg 3,405 shares, and by other persons, making a total of 3,736 shares out of 4,970 shares present, and that said board of directors were duly declared elected by Dunbar; that DeWolf, as president, presided at the said meeting; that Charles S. Holt, counsel for the American company, was present and claimed to be the proxy and owner of 3,305 shares of the 3,405 shares so owned and voted by Milo G. Kellogg in person; that said DeWolf, acting in the interest of the American company and the Electric company, refused to recognize the vote of Milo G. Kellogg in respect to 3,305 shares of stock, and claimed and pretended that the directors so chosen were not elected but that in their place and stead the second set of nominees were elected, and that said second set of directors, other than Edwards, under the direction of the American company, the Electric company and Fish and Barton, have assumed and pretended to be, and have acted as, the directors of said Kellogg company. It is averred that Milo G. Kellogg was the owner of and entitled to vote the 3,305 shares of stock, and that the vote of such stock by Holt was void and of no effect. Said supplemental bill prays that Dunbar, Miller, Burlingame, Milo G. Kellogg, Leroy D. Kellogg, James G. Kellogg and Edwards may be declared elected and to constitute the duly elected board of directors of the Kellogg company, and prays for an injunction against all persons interfering with the exercise of their duties as such board. Subsequently, by amendment and supplemental bill, it was charged that on the 19th day of December, 1906, the Kellogg company declared a dividend of fifty per cent upon all its capital stock, and that said company on that date paid to such American company a dividend amounting to $215,550 upon 4,311 shares of stock of said Kellogg company. The American company denied, by supplemental answer, that it had received a fifty per cent dividend, or a dividend of any per cent or any amount, on any shares of stock of the Kellogg company. A plea was interposed setting up the dismissal of the cross-bill and the affirmance thereof by this court as an adjudication that Milo G. Kellogg was not the owner nor entitled to said shares of stock, and for that reason was not entitled to vote said shares at the stockholders' meeting on January 15, 1907.

The foregoing statement is sufficient to show the general character of the bill. The findings and decree of the circuit court may be summarized as follows: After reciting in detail the averments of the bill and finding the facts substantially as therein charged to be true, and specifically finding that the pretended purchase of 4,311 shares of stock by the American company, in its necessary operation at the time it was made, tended and tends to materially suppress competition and creates in said American company and its licensee companies a monopoly in the rendering of telephone service to the public throughout the United States and in the different cities and other places thereof, and that it was the intention and purpose of said American company, in making each of the pretended purchases of said shares of stock, to so restrict and suppress competition in said telephone service and create in itself a monopoly in said service, and that said attempted purchases of stock by the American company were contrary to the public policy of the State of Illinois and void, the decree finds that no title to said stock passed thereby from any of said sellers to said American company or to said Barton, but that, despite said attempted sales, each of said sellers still remains the owner of the shares of stock so attempted to be purchased from him. The decree finds that the American company paid DeWolf, as attorney in fact of Milo G. Kellogg, for the stock obtained from him, $351,229.44, and that the said American company paid to the several owners thereof $114,036.48 for the other shares of stock, being a total of $465,265.92 which the said American company paid for 4,311 shares of stock. The decree finds that on December 19, 1906, the Kellogg company declared a dividend of fifty per cent upon all its capital stock being then under the control of the American company, and on that date paid to said American company, and said American company received, the dividend of fifty per cent upon the 4,311 shares of stock which the said American company claimed to own. The dividend paid to the American company on this date was $215,550. The decree recites the proceedings of the stockholders' meeting in January, 1907, and finds that the set of directors nominated and voted for by Milo G. Kellogg were duly elected directors of the Kellogg company, and that said Kellogg was entitled to be recognized as a stockholder of the Kellogg company, with the right to vote the shares of stock attempted to be sold by DeWolf to the American company, and that the other set of directors, other than Edwards, were not elected directors of the said company. Following these findings the decree of the circuit court ordered, adjudged and decreed that Milo G. Kellogg and the other stockholders of the Kellogg company who had made a pretended sale to the American company are still severally the owners of such shares of stock, aggregating 4,311 shares, and a permanent injunction is granted restraining the Kellogg company, and its agents and officers, from refusing to recognize such parties as stockholders and from rejecting the votes of any of them except in so far as the injunction might be modified, and also from recognizing and treating said American company, or any of its assigns, as the owner or owners of any of the said 4,311 shares of stock; that the temporary injunction heretofore issued against the American company and others be made perpetual. The board of directors declared to have been elected by DeWolf at the January meeting are enjoined perpetually from exercising any of the powers or privileges of directors of said Kellogg company, and from in any way interfering with the conduct or management of the business affairs or the possession or control of the property, books or papers of said Kellogg company, unless hereafter duly elected such directors in said company. DeWolf and Dommerque were perpetually enjoined from acting as president and secretary, respectively, of the Kellogg company. By the seventh paragraph of the decree it was ordered, adjudged and decreed that the American company, within ten days from the 15th day of February, 1908, deposit with the clerk of the circuit court, duly endorsed in blank or to the order of the clerk of said court, all of the certificates of stock representing or purporting to represent 4,311 shares of stock so attempted to be purchased by said American company, and, if necessary to enable him to make distribution of said shares according to the decree, said clerk is authorized to surrender such certificates and that the Kellogg company should issue in lieu thereof other like certificates of stock, aggregating 4,311 shares. By the eighth paragraph of the decree it is ordered, adjudged and decreed that within twenty days after said certificates shall have been deposited with said clerk, and any of said sellers to the American company of said stock shall have been served with notice of the deposit of said certificates with said clerk, said seller may deposit with such clerk a certified check upon a Chicago bank, payable to the American company, for the difference between the purchase price paid by the American company for the said stock, plus the interest at the rate of five per cent per annum thereof from the time or times when payment or payments were made to the date of said deposit of said check, and the sum of fifty per cent of the par value of said stock plus interest thereon at five per cent per annum from December 19, 1906, to the date of the deposit of said check, and upon delivery of such certified check to the clerk said clerk shall forthwith deliver to the seller so depositing such check a certificate, duly endorsed, for the number of shares so attempted to be sold by said seller to the American company and shall deliver said check to the American company. The decree names the several sellers of stock and the number of shares that each is entitled to receive under this clause of the decree. By paragraph 9 of the decree it is ordered, adjudged and decreed that in the event the said American company shall not, in compliance with this decree, deposit the said certificates for 4,311 shares of stock within ten days from the 15th day of February, 1908, the said certificates of stock for said 4,311 shares shall, each of them, be, and the same are, canceled and held for naught, and the Kellogg company is directed to immediately issue and deliver to the clerk of the court new certificates for said 4,311 shares of stock, such certificates to be for the several numbers of shares of stock which will permit the distribution to the several parties as in the decree contemplated, and the several sellers of such stock are permitted to receive the shares to which they are severally entitled, by depositing a check for the amount and in the manner provided in paragraph 8 of the decree, and upon his doing so the clerk shall deliver to such seller such new certificate of stock for the number of shares specified opposite his name in paragraph 8, and said Kellogg company shall have and recover from the American company the sum of $215,550, with interest thereon at the rate of five per cent per annum from December 19, 1906, crediting, however, in reduction of said judgment, all sums received by said American company in respect of dividends or interest thereon which any seller shall have applied, by way of offset, in a settlement for his stock under the provisions of the decree, and in default thereof execution to issue therefor. Any money collected by the Kellogg company on said judgment is to be held by it subject to the further order of the court, and any checks delivered to the clerk by any seller under the provisions of this paragraph shall be turned over and paid to the American company. Paragraph 10 of the decree makes provision for a public sale by the master in chancery of all or such part of the certificates of stock as should not be accepted and paid for by the sellers thereof in accordance with the preceding provisions of the decree. Out of the proceeds of the sale the master was directed to deduct his commission, and pay for the proceeds of said sale to the American company the difference between the purchase price paid by the said American company to said seller to it, for the shares of stock so sold by the master, plus interest at five per cent on said payments from the date when they were made to the day of sale, and the sum of fifty per cent of the par value of the said stock so sold, plus interest thereon at five per cent from December 19, 1906, to the date of said sale by the master, and if there is a balance remaining in the hands of the master of said proceeds he is directed to pay it to the sellers of the stock. A provision is made in the decree modifying the injunction so as to permit the board of directors elected by the votes

of the American company in January, 1907, to continue in the management of the affairs of the Kellogg company until all of the sellers of said stock shall have complied with the provisions of the decree in regard to making a deposit with the clerk to reimburse the American company in accordance with the provisions of paragraphs 8 and 9 of the decree, or until a sale of said stock. There are some general provisions in the decree intended to regulate the conduct of the affairs of the Kellogg company pending the execution of the the decree which are not necessary to be set out, since they are subsidiary in their nature and intended to regulate matters of detail consistently with the general relief granted by the decree.

Upon a review of the foregoing decree by the Appellate Court for the First District the decree of the circuit court was reversed and the cause remanded to the circuit court, with directions to enter a decree in accordance with the views expressed in the opinion of said Appellate Court. The Appellate Court held that the evidence sustained the material averments of the bill, but refused to hold that the purchase of the stock by the American company was void as between the parties to the sale. It held that the sale was void as to the minority stockholders and only voidable as to Kellogg and other sellers. The decree of the circuit court was held to be erroneous in that it recognizes in the minority stockholders the right to have the title to the 4,311 shares of stock determined and adjudged upon their bill, holding that such relief could not be granted under the pleadings in this record. Another point of difference between the circuit and Appellate Courts is in regard to the election of a board of directors at the January meeting, 1907. The Appellate Court held that owing to an irregularity in the manner of voting the shares of Milo G. Kellogg the persons for whom he attempted to vote were not elected, independently of the question as to who had the right to vote said shares, and that therefore DeWolf, Hanford and Buckingham, who had previously been elected directors prior to this meeting, held over until their successors were duly elected; that eliminating the 4,311 shares of stock from the January meeting there was no quorum and no election, hence the result is reached that the old board is still holding over in office under the by-laws, which provide that the directors shall hold their office until their successors are duly elected. The Appellate Court held that by the alleged sale by DeWolf of the Kellogg stock a title passed which is good until set aside, and that such sale could only be set aside on a bill for that purpose upon equitable terms requiring a return of the purchase money; that the decree dismissing Kellogg's cross-bill was an adjudication that he had no right to the stock. The relief which the opinion of the Appellate Court directs to be given is limited to a perpetual injunction against the American company from voting the stock and from receiving any dividends thereon, and a like injunction against the Kellogg company from permitting such stock to be voted by the American company or anyone representing it, and from paying such American company any dividends upon such stock.

While briefs have been filed in this court on behalf of four parties, it is apparent that there are only two real adversary interests—the American company and those identified with it, on the one hand, and those who are seeking to maintain the integrity and independence of the Kellogg company on the other. All the parties can readily be located on the one side or the other of this line of division. The American company, its president, Fish, and other officers and agents; the Electric company, its president, Barton, and its other officers and agents; DeWolf, and other officers and agents of the Kellogg company, who owe their official relation to it to the American company from its control of the majority of the stock of the Kellogg company, are all identified in interest with the American company; on the other hand, Milo G. Kellogg and others who made the alleged sales of stock to the American company, the minority stockholders who filed the original bill, and the board of directors for which Kellogg cast his votes at the January meeting, in 1907, represent the other side of the controversy. We will consider the several questions arising on this record with this general classification in view.

The first question which requires consideration arises on the cross-errors assigned by the American company, which call in question the findings of the circuit court that the tendency of the stock purchase by the American company was to suppress competition and that such purchase was made for such unlawful purpose. This question involves the right of appellants to any relief whatever. If appellees' contention is sustained upon this point it would necessarily follow that the judgment of the Appellate Court and the decree of the circuit coudt should both be reversed and the cause remanded to the circuit court, with directions to that court to dismiss appellants' bills.

A preliminary question is presented as to the degree of proof required to establish the charges in the bill. On behalf of the American company and Barton it is contended that the bill charges them with a criminal offense, in that the bill, in effect, charges a violation of sections 1 to 4 of the Anti-trust law of 1891 and sections 1 to 6 of the Anti-trust act of 1893, both of which acts are found in chapter 38, sections 269a to 269t, Hurd's Revised Statutes of 1905. Without deciding what the rule as to quantity of evidence would be if a violation of the Anti-trust laws were charged in the bill, it is sufficient to say that the law of 1893 has been held unconstitutional by the Supreme Court of the United States in Connolly v. Union Sewer Pipe Co., 184 U. S. 540, and that as to the act of 1891, it is leveled against creating, entering into or becoming a party to any pool, trust, agreement or combination to fix or limit the amount or quantity of any article of merchandise or fix the price or lessen the production and sale of any such article, which offenses are not charged in the bill either by direct averment or necessary implication. The charge in the bill is that the purpose and tendency of the purchase of the stock in question by the American company were to stifle competition, and the purchase was therefore illegal and void because contrary to the public policy of this state. Whether any of the provisions of the Anti-trust act were violated by any of the parties to the transaction involved in this suit is not necessary for us to now discuss or determine. It is a sufficient answer to this contention that such violation is not charged in the pleadings, nor is it necessary to prove such offense to maintain the action or defense set up in these pleadings. It is not necessary that the proof should exclude every reasonable doubt of the truth of the averments of the bill to justify a decree in favor of appellants. Does the evidence sustain the averments of the bill upon the truth of which the unlawful character of the stock purchases depend? The evidence in this record which is largely directed to a solution of this question is very voluminous. It would not be practicable within any reasonable limits of an opinion to discuss it in detail. In the bill of appellants, as the same was presented upon the former hearing in this court and as the same stood, with some slight amendments and additions, when the cause was heard, the facts relied upon to establish the unlawful purpose and tendency of the stock purchases were set out in detail, as will appear from the summary of those averments already set out in this opinion.

The proof shows that the American company and the Kellogg company were competitors in business, and that their fields of operation extended not only throughout the United States, but to foreign countries as well. That the American company regarded the so-called Independent exchanges throughout the country as offering the most serious obstacle in the way of its complete monopoly of the telephone business in the United States cannot, under the evidence in this record, be denied. The Kellogg company manufactured multiple switchboards and other telephone apparatus and supplies and sold its products to the Independent exchanges throughout the country. The interest, therefore, of the Kellogg company was identified with the Independent exchanges, since they were the only customers for its products. It is shown that Milo G. Kellogg was an expert in telephony and a successful inventor of many new and valuable appliances in the telephone business. Patents for these appliances were owned and controlled by the Kellogg company and contributed much to the success both of the Kellogg company and the Independent exchanges which bought and used them. The evidence shows that the Independent exchanges, to the number of seven thousand, maintained friendly relations with each other through a central organization, which holds annual conventions for the purpose of discussing questions of mutual interest and with a view of advancing the interests of the Independent exchanges in their rivalry and competition with the American company and its subsidiary exchanges. It is also shown that the American company controlled its licensee companies through the ownership of a majority of stock of the local Bell telephone companies, and that the local Bell telephone companies obtained their equipment entirely through the Electric company, which the American company also controlled through the ownership of a majority of the capital stock of the Electric company. Thus the profits of the American company depended upon the number and success of its subsidiary companies. The Electric company manufactured only for the subsidiary American companies. The Independent companies were compelled to procure their apparatus and equipment from Independent manufacturers, the principal one of which was the Kellogg company. Continuance in business of the Independent exchanges throughout the country depended upon the continued existence of the Independent manufacturers of whom they could procure equipment. If the Independent manufacturers should go out of business or pass under the control of the American company the Independent exchanges would be reduced to the alternative of going out of business or becoming subsidiary to the American company. In addition to selling equipment to Independent companies, the Kellogg company and other Independent manufacturers would promote and finance the Independent exchanges by furnishing money for construction purposes and taking pay in securities. This feature of the Independent manufacturers was a source of no little concern to the American company.

The evidence shows that in November, 1901, Milo G. Kellogg, being much alarmed about his health, hastily placed the affairs of the Kellogg company in the hands of his brother-in-law, Wallace L. DeWolf, and on or about the 23d day of that month went to California, where he remained until the latter part of the following summer. The Kellogg company, and Milo G. Kellogg personally, had become liable, as endorsers, for a large amount of paper made by the Everett-Moore syndicate, and in anticipation that it would be necessary to raise money to meet these liabilities and other accruing bills of the Kellogg company, Milo G. Kellogg gave DeWolf a general power of attorney to sell or

hypothecate all the shares of stock in the Kellogg company which were the individual property of Milo G. Kellogg. The evidence shows that soon after the departure of Kellogg for California DeWolf entered into negotiations with Barton for the sale of a controlling interest in the Kellogg company. After one or two interviews between Barton and DeWolf, Barton went to New York and had a conference with Fish, the president of the American company. The result of this interview was that Barton returned to Chicago with full authority from Fish to purchase a controlling interest in the Kellogg company. The contract of sale was entered into between Barton and DeWolf on January 4, 1902. The money to pay for this stock was forwarded by Fish to Barton and by him delivered to DeWolf. The stock assigned to Barton, although he was not the real purchaser, and, so far as the record shows, had no personal interest in the transaction. It was understood and agreed between Barton and DeWolf that the transaction should be kept secret. DeWolf did not inform Milo G. Kellogg of the sale until the 4th day of July, 1902. DeWolf testifies that Kellogg was a very sick man, and that he told Barton that he had gone to California and that he doubted whether he would "ever recover." DeWolf was continued in charge of the Kellogg company, but after the sale of this stock he consulted with Barton with reference to its affairs. On July 4, 1902, DeWolf met Milo G. Kellogg in Denver, Colo., and then for the first time told Kellogg about the sale of the stock to Barton. The evidence shows that Kellogg heartily disapproved of the course that had been taken. He entered into negotiations for the purpose of buying this stock back, but Fish and Barton refused to sell him the stock, although he offered a profit of $25 per share. In the contract that was entered into between Barton and DeWolf it was stipulated that the Kellogg company should be run for one year as it had been theretofore. It was also provided in the contract that Barton should purchase any other shares of stock that might be offered, upon the same terms he had contracted for the Kellogg stock, and under this clause the purchase of the other shares followed.

The purpose and intent of DeWolf in making this sale is not of controlling importance. Whatever his purpose may have been does not assist us in determining the buyer's purpose. It may be that DeWolf's purpose was to relieve the financial situation of the Kellogg company, which seems to have been greatly exaggerated in his estimation. At all events he makes this excuse for himself, and we are disposed to take a charitable view and accord him the benefit of his own explanation. It is certain that neither Fish nor Barton was actuated by sympathy for any real or imaginary financial distresses that surrounded the Kellogg company. The reasonable inference from the evidence in this record is, that if Barton and Fish had been sure that the Kellogg company was on the brink of financial ruin they would not have invested in this stock, but would have trusted to the desired end working itself out through the downfall and failure of the Kellogg company. We cannot conceive of the American company rushing in to aid a rival in business by investing nearly a half million dollars in the stock of a company of doubtful solvency. What, then, must have been the purpose of this purchase? In answer to this question three possible motives may be suggested: (1) The purpose may have been to acquire additional manufacturing facilities; or (2) to invest idle funds of the American company in stocks which would make a fair return upon the money; or it may have been (3) to advance the interests of the American company by lessening the competition of the Independent exchanges which were being supplied with apparatus and financial aid by the Kellogg company. Let us inquire, in the light of this testimony, which of these motives actuated the American company in making this purchase.

Mr. Fish, in his testimony given in a case against the American company in New York, which was a proceeding to set aside a contract by which the American company obtained control of the Stromberg-Carlson company, another Independent manufacturing concern, testified as follows: "The question that was troubling me was not as to the value of the Stromberg-Carlson company's plant to anyone who wanted a telephone manufacturing company. We did not want a telephone manufacturing company, because we had one of our own. We have had trouble in supplying all the wants of our companies through our present sources of manufacture, but it was a trouble we could meet by the developments of our own factory." He testifies that the Electric company turned out last year a product of $69,000,000, and these additional companies, being so small in comparison with the Electric company, would not weigh in the balance. The first motive suggested must be eliminated as entirely without the range of reasonable probability.

Was this stock purchase made as a legitimate investment of surplus funds by the American company? To this question a negative funds by the American company? To this question a negative answer must be given for the following reasons: (1) The American company is not an investing company, except in the stock of its subsidiary companies. Mr. Fish says in his testimony: "I couldn't tell you what percentage of this capital is invested in the stocks of these sub-companies. It is a very large per cent. Besides this, something over $35,000,000, if I recollect aright, is invested in the long distance lines. Of course, the company has real estate, and also, of course, a large investment in the telephones that are leased to these sub-companies. Those are the substantial items. I don't recall any of large magnitude outside of that. To no substantial extent that I remember has it been an investor in other stocks than stocks of companies connected with the telephone service. It has to a negligible extent—to no large extent, that I recall,—all its investments of stock have been in these telephone companies, largely for the purpose of developing those companies. In the very old days there was undoubtedly a period when the company bought stock for the purpose of bringing them into the sphere, but it is many years since there has been any change in the relations, and since my time it has been substantially all for the purpose of developing the business of the companies whose stock was already held, and this stock buying has substantially been along that line." (2) Th eevidence does not show that the American company had any surplus money to invest. At the time this stock was purchased the American company was contemplating the issuance of $30,000,000 of its bonds, and within a few months after this stock was purchased these bonds were issued and sold, together with issues of its stock for the purpose of raising funds to extend its business. (3) If the American company bought this stock as an investment, why refuse to sell it to Kellogg when, within a few months after the purchase, he offered it a profit of $25 per share? This offer was refused when this litigation was threatened, and if the purchase had been made for the purpose of an investment, it is reasonable to conclude that the American company would have preferred a large profit rather than to imperil the whole investment in uncertain and vexatious litigation.

Eliminating from consideration the possible motives already suggested and considered, we are brought to the conclusion that the only conceivable purpose the American company had in making this purchase was to decrease to the minimum the competition of the Independent exchanges, the existence and success of which were due in a large degree to the Kellogg company. Is there any evidence to justify this inference aside from that by which all other rational motives are eliminated?

Mr. Fish says in his testimony: "The Kellogg company and the other manufacturers for the so-called Independent companies were in the habit, and are to-day, of financing them—that is, carrying the large indebtedness and taking pay in securities. * * * I have no doubt that in the course of the discussion [with his executive committee] I made reference to that fact, for I had frequently considered it with the executive committee before, and probably did say that with the Kellogg company run strictly as a business concern it would no longer jeopardize its own interests and hurt us by unduly financing the Independent telephone companies. * * * If I said anything at all,—and I don't remember that I did say it, although I have often said the same thing to the members of the executive comittee,—it was that if this arrangement were made the Kellogg company would no longer give extended credits to customers like the Everett-Moore syndicate, that were enabled to develop at the expense of the manufacturing companies from whom they bought their supplies, and to the small extent that the Kellogg company was in the field as a promoting company that was an element to be taken into account. * * * The only way in which our companies were injured by the financing by the manufacturing companies of Independent telephone companies was not the competition that those Independent companies, when financed, created in our field, but the kind of competition, which was one based upon absolutely false ideas of cost and rates that were and have been found to be impossible, * * * and when I speak of the injury to my companies, what I mean is, the plain proposition that there was an illegitimate business developed at the expense of the manufacturing companies." Again he says: "I have no doubt that we should have used our interest in the Kellogg company exactly as we used our interest in the Western Electric Company, or any other interest—to benefit our organization as a whole." Again, he testifies that it "was an advantageous investment for us to make of a small amount of money in view of our general interests." By "advantageous" he explained: "I mean advantageous pecuniarily to the American Telephone and Telegraph Company and its stockholders. The ultimate motive is everywhere and always the advantage of the American Telephone and Telegraph Company and its stockholders." He testifies that in some instances his company has incidentally fostered and advanced Independent telephone companies, "and in some of them we have done it knowing what we were about," but he distinctly takes this transaction out of that class by saying: "I don't think in this we fostered or undertook to foster or advance Independent interests." Again he says: "We had no purpose to save the Kellogg company from a collapse out of consideration for the Independent interests." Again Mr. Fish says in his testimony: "These transactions of which you are inquiring were taken with the end in view of working out the telephone situation as well as we could. If it were practicable to work it out so as to eliminate the competition in the same territory, that would be clearly for everyone's interest, and it would have undoubtedly worked out in that way. It was our thought that by making this purchase we could get rid of this ruinous competition in the end, and be of substantial benefit not only to our company, but to the competitors to our company and the public."

In view of these admissions of the president of the American company the conclusion is irresistible that the purchase of the stock of the Kellogg company was made with the purpose and intent on the part of the American company to ultimately destroy, as far as possible, the competition of the Independent exchanges which were being financed and furnished equipment by the Kellogg company. That it was contemplated that ultimately there should be an increase in the rates charged the public for tele-

phone service as fast as the Independent exchanges could be put out of business and the American subsidiary companies installed in their stead is virtually admitted by Mr. Fish in his testimony, both in respect to the Kellogg purchases as well as in his evidence in regard to the Stromberg-Carlson deal in New York. Mr. Fish's contention is that the Independent companies were furnishing service to the public from 30 per cent to 35 per cent cheaper than it should be. He testifies that in his opinion the so-called Independent companies did not figure a sufficient sum for renewal of worn out equipment, and by thus disregarding this important factor in the telephone business the Independent exchanges were engaged in "ruinous" competition. Mr. Fish also testifies that "the American company is a dividend-paying company. Its object is to make dividends as large as possible." While he does not say so, it is not impossible that the desire "to make dividends as large as possible" may also be a factor which has much to do with the price which Mr. Fish thinks any well regulated telephone company ought to charge the public for telephone service.

The evidence is entirely satisfactory in this record that this stock was purchased with the intent and purpose charged in the bill, and at the time it was contemplated that the Kellogg company would cease business if the original plan and purpose had been carried out. Mr. Fish admits that he and Barton discussed the probable loss that would result from winding up the affairs of the Kellogg company, and that it was estimated that the loss would not exceed $100,000. That the original purpose was to wind up the affairs of the Kellogg company is manifest from a clause in the contract entered into between DeWolf and Barton, by which it was agreed that there should be a distribution of the proceeds of bills and accounts receivable to the selling stockholders. This clearly contemplated the liquidation of the Kellogg company. This clause of the contract was commented on by this court on the former hearing on page 23, as follows: "The averment of the bill to the effect that it is the purpose of the American company to suppress competition and create in itself a monopoly is further aided by the averment that Barton, through whom the purchase was made, agreed to pay, as part of the purchase price, so much per share in cash and the balance by applying thereto the pro rata proceeds of any or all bills and accounts reasonably due and owing to the Kellogg company on December 1, 1901, the same to be settled and paid to said seller as the same are paid and collected by said company, plainly indicating that a dissolution of the Kellogg company was contemplated, because in no other event could the American company appropriate the assets of the Kellogg company to pay a stockholder of that company for the stock purchased by the former company from him; also, that by the contract of purchase the Kellogg company should be carried on in the usual manner for the space of one year in order that bills and accounts receivable could be collected in the usual course of business, thus showing a purpose to dissolve the Kellogg company after the expiration of one year."

If further evidence were necessary to fix upon the American company the unlawful purpose of eliminating competition in the purchase of this stock, the fact might be pointed out that about the time this purchase of stock in the Kellogg company occurred, Mr. Epps called on Mr. Stromberg and said that he "represented one of the largest stockholders in the Kellogg company" and wanted to buy a controlling interest in the Stromberg-Carlson company. Mr. Stromberg refused to entertain a proposition to sell. Epps was sent to Stromberg by DeWolf, who admits that he had talked with Barton about it, and Barton does not deny his participation in this transaction. The evidence shows that afterwards the Stromberg-Carlson company's plant was removed to Rochester, New York, where it continued to manufacture equipment for the Independent telephone companies, and that afterwards the American company again attempted to buy the Stromberg-Carlson company's plant by purchasing the control of another company which owned a majority of the stock of the Stromberg-Carlson company. This transaction resulted in a suit by the Attorney General of New York which caused the abandonment of the proposed purchase. If a controlling interest in these two large Independent manufacturing companies could have been obtained by the American company it would have seriously crippled Independent exchanges throughout the country.

Again, the evidence shows that the American company, almost immediately after the purchase of the Kellogg stock, made an attempt to get control of $275,000 of notes of the Everett-Moore syndicate. Everett and Moore were promoters. They had behind them a syndicate which had built a large number of street railways and telephone plants in Ohio, Illinois and elsewhere. About the time of the purchase of the Kellogg stock the Everett-Moore syndicate became temporarily embarrassed financially, and it was at this time and under these circumstances that the American company sought to acquire the notes of the Everett-Moore syndicate. Mr. Fish in his testimony frankly admits the attempt to obtain control of this large amount of indebtedness against a concern which was giving aid and assistance in promoting and maintaining Independent telephone exchanges at a time when the Everett-Moore syndicate was temporarily embarrassed, and the reason given by Mr. Fish for desiring to obtain control of these notes is thus explained by Mr. Fish himself: "You are undoubtedly referring to the thing I referred to a short time ago, that some time in the spring there was a suggestion made that we should buy the claims against the Everett-Moore syndicate; and my further impression is that they were claims of Mr. Kellogg's and not of the Kellogg company, and that we should buy those for a substantial discount from their face value, which would give us the claims for adversary purposes, if we chose to use them in that way. By adversary purpose I mean for the purpose of taking such steps against Everett and Moore and the Federal Telephone Company as were to our interest; that we should get such advantage as there should be by coming into the possession of these creditors' claims." This circumstance is mentioned as throwing a sidelight on the general methods of warfare against the Independent telephone interests that Mr. Fish and his company sanctioned and employed. There can scarcely be any doubt that the purchase of the stock of the Kellogg company proceeded from the same general purpose which Mr. Fish confesses he had in seeking to obtain the Everett-Moore syndicate notes.

Without attempting to analyze the evidence in detail or further discussing it in general, our conclusion is that the finding of the circuit court that the purpose of the American company in making this purchase, as well as the inevitable tendency of the same, was to lessen competition in the business of furnishing the public with telephone service is abundantly sustained by the proofs. This question of fact being settled, the law applicable thereto was determined by this court upon the former hearing already referred to. It would not be necessary for us to do more than call attention to our previous decision in order to establish the general legal conclusion to be drawn from these facts, were it not that a serious difference of opinion seems to exist as to what this court really did decide on the former hearing. Appellees contend that, conceding the facts to be as found by the circuit court, still the stock purchase was only voidable, and that such contention is consistent with the previous decision of this court in this cause. This view was adopted by the Appellate Court, hence the widely different results reached by that court and the circuit court in the adjustment of the equities of the parties. We do not think there is any uncertainty or ambiguity in the language employed by Mr. Justice Wilkin in rendering the opinion of this court on the former hearing. A careful reading of that opinion will show that the right of the minority stockholders to maintain their bill is placed on two grounds: First, that there was a total want of power in the American company to purchase a controlling interest in a competing Illinois corporation. This question is discussed on pages 26 to 29 of the opinion, and it is there held, as clearly as language can express it, that no title to the stock passed by the alleged sale under the facts averred in the bill and that the "whole transaction is null and void," and that the minority stockholders had a standing in equity to restrain the pretended holders of such stock from any participation in the affairs of the company. A second ground upon which this court held that the bill might be maintained by the minority stockholders was, that treating the sale simply as an excessive and wrongful exercise of a power which the American company had, for the purpose of making the Kellogg company subservient to the American company, thereby freeing that company and its licensees from the competition of the Kellogg company and Independent exchanges, was such a fraud against the stockholders of the Kellogg company that the plainest principles of equity gave them a right to relief. This view is presented on pages 29 to 32. The discussion of the second ground upon which the bill was maintainable in no way detracts from the force of the decision in regard to the first.

Both the American company and the Kellogg company were engaged in this state in the same general line of business. They were indirectly, if not directly, competitors in the business of supplying the public with telephone service. This business is impressed with the public use. The American company could exercise no powers in this state which could not be exercised lawfully by a domestic corporation in the same line of business. The attempt by the American company to purchase a controlling interest in the Kellogg company was unlawful. The word "unlawful," as applied to the purpose and acts of corporations, is not used exclusively in the sense of malum in se or malum prohibitum. It is often employed to designate powers which corporations are not authorized to exercise or contracts which they are not authorized to make,—or, in other words, such acts, powers and contracts as are ultra vires. Neither a foreign nor a domestic corporation can lawfully become a stockholder in another corporation unless such power is expressly given or necessarily implied, and especially is this true where the object is to obtain the control of such other corporation. There is no provision of our general Incorporation law authorizing one corporation to purchase and hold shares of stock in other corporations, and there is no implied power to so purchase stock in other corporations expect where it is necessary to carry into effect the objects for which such corporation was formed. The purchase of a controlling interest in the Kellogg company by the American company cannot be sustained on the ground of implied power. As a general proposition, all contracts and agreements, of every kind and character, made and entered into by those engaged in an employment or business impressed with a public character, which tend to prevent competition between those engaged in like employment, are opposed to the public policy of this State and are therefore unlawful. All agreements and contracts tending to create monopolies and prevent proper competition are by the common law illegal and

void. (People v. Chicago Gas Trust Co., 130 Ill., 268.) The public policy of the State on any question is to be sought for in the constitution and legislation as interpreted and expounded by the courts. Section 22 of article 4 of the constitution of 1870 provides that the General Assembly shall pass no local or special law for "granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise whatever." This is a clear declaration that the public policy of this State is opposed to all exclusive and monopolistic franchises and powers, of whatsoever kind or character. It is also contrary to the public policy of this State to charter a corporation for the purpose of buying and selling real estate. The Connecticut Land Company was a corporation organized under the laws of the State of Connecticut, and by its charter it was authorized to deal in real estate. That corporation invested $500,000 in Illinois lands. In the case of Carroll v. City of East St. Louis, 67 Ill., 568, this court held that the Connecticut Land Company had no power to purchase land in this State contrary to the public policy thereof, and that no title passed to said company and it had no power to pass title to its grantees. This case was an illustration of the application of the doctrine announced by the court on the former hearing of this case, that a contract made in violation of the public policy of this State is utterly void. It logically follows that the attempt of the American company to acquire the control of the Kellogg company is void, and that the contracts entered into in pursuance of this purpose are mere nullities, and that the title to the stock in question never passed from the sellers to the American company. This was, in effect, what this court decided on the former hearing.

The next question that requires consideration is whether the Appellate Court erred in its direction to the Circuit Court in respect to the relief to be granted appellants. As already shown, the Appellate Court limits the relief to be granted to an injunction against the American company exercising the rights of a stockholder and from receiving any dividends upon the stock in question. A decree confined to such relief would leave this stock in the hands of the American company, which is inconsistent with the previous decision of this court, wherein it is held that the American company had no corporate power to buy the stock and that the attempt to purchase it was ultra vires. The interests of the minority stockholders could not be as well protected by allowing the American company to retain this stock as they will by requiring this stock to be returned to its rightful owners. It is not conceived how it would be practicable to continue the business of the Kellogg company with a controlling interest in its stock tied up by injunction in the hands of an unfriendly competitor. No method of conducting the affairs of the Kellogg company is suggested by the opinion of the Appellate Court, and it may be that that court took the view that was urged upon this court in the oral argument, that the decree which the Appellate Court directed to be entered would, operating from the self-interest of the American company, force it to sell its holdings of Kellogg company stock. This might or might not be the result, but if the American company is allowed to sell this stock, it will, of course, determine who the purchaser or purchasers will be. A decree entered under the direction of the Appellate Court would leave the American company with liberty either to retain the stock or to sell it to any person to whom it saw fit to sell, and the purchasers from the American company would enjoy all the rights, privileges and benefits of stockholders. If the American company should sell this stock to someone who was friendly to the American company, it is not at all improbable that the decree which the Appellate Court directs to be entered would be entirely barren of any substantial relief to the minority stockholders. It seems to us that the only way any substantial and permanent relief can be given to these minority stockholders is to require the American company to surrender its stock to its rightful owners upon equitable terms. This relief the Circuit Court granted, and in our opinion properly so, since nothing short of this will afford the minority stockholders complete relief.

It is contended by appellees that the decree of the circuit court cannot be sustained because it grants affirmative relief to Milo G. Kellogg without a cross-bill being filed by him. When this case was before us on the former hearing it was held that the court below properly sustained a demurrer to Kellogg's cross-bill. One of the reasons then given why the decree was affirmed is found on page 32, where this court said: "We think the decree of the circuit court sustaining the demurrer to and dismissing the cross-bill is right and should be affirmed. No necessity whatever for that bill is shown. At most, Milo G. Kellogg was a mere nominal party to the original bill. No relief was prayed against him, and if a decree granting the prayer of that bill had been rendered he would have obtained all he was in equity entitled to." The relief which Milo G. Kellogg obtains under the decree of the circuit court is a necessary incident to the complete relief to which the minority stockholders are entitled. As we have already attempted to point out, if a controlling interest in the Kellogg company is left in the hands of the American company, or some friendly ally to whom it might choose to sell, it is apparent that the interest of the minority stockholders would be exposed to all the dangers which led them to file their bill in the first instance. It therefore becomes necessary, in order to fully protect the complaining stockholders, to divest the American company of all advantages it has secured through its unlawful attempt to obtain control of the Kellogg company. When the court grants the minority stockholders adequate relief, it is clear that the relief resulting to Kellogg and other stockholders who sold to the American company is merely incidental to the main relief sought by the bill. A cross-bill is wholly unnecessary. Kellogg answered the original bill, in which he admitted all of the material averments thereof, so that there was no issue as to him to be tried and no relief was prayed against him in the original bill. In Boone v. Clark, 129 Ill. 466, this court held that a cross-bill filed by junior mortgagees filed in a proceeding to foreclose the senior mortgage was properly dismissed for want of equity. On page 493 this court said: "It is further insisted that at least these appellants were entitled to a decree, under their cross-bill, foreclosing their trust deed as against W. H. Colehour, and the court therefore erred in dismissing the cross-bill. The filing of a cross-bill is not necessary for the preservation of the rights of a junior mortgagee to the same premises, as has been seen; and if the appellants desire, they may, under their answer, move the court, and it will be the duty of the chancellor,—and which may yet be done in this cause,—to preserve their rights, as against Colehour, in any surplus remaining from the sale of the property after the payment of the amount due appellees."

Again, appellees contend that the dismissal of the Kellogg cross-bill for want of equity was an adjudication of all his rights. This contention is answered by the quotation which we have already made from Boone v. Clark, supra. This dismissal of a cross-bill for want of equity, under circumstances rendering the cross-bill unnecessary in order to obtain the relief sought by it, is not an adjudication that the complainant in the cross-bill has no rights in the subject-matter of the litigation. It would be a judicial outrage on the rights of Kellogg to dismiss his cross-bill on the ground that he could obtain all the rights he was entitled to under the original bill, and then deny him, upon the hearing of the original bill, such relief as he in equity is clearly entitled to, on the ground that his rights had already been adjudicated. Courts of equity were never designed to work out such unconscionable absurdities.

Again, the appellees insist that the decree of the circuit court cannot be sustained for the reason that Kellogg and the other selling stockholders are in pari delicto with the American company. To this we cannot assent. In the first place, the unlawful features in this transaction are largely imported into it by reason of the unlawful purpose of the American company. It was the American company that expected to profit by suppressing competition and the creation of a monopoly in this State. There is no evidence that this unlawful purpose was entertained by Kellogg or the other sellers of this stock. If it be said that DeWolf is particeps criminis in this transaction, it may be replied that Kellogg could not and did not attempt to authorize him to enter into a contract against the laws or public policy of the state. Kellogg gave DeWolf a power of attorney to sell his stock if necessary to raise funds to protect his interest and that of the Kellogg company. This was a perfectly legal and proper thing to do. If DeWolf wrongfully, and in violation of the confidence reposed in him by Kellogg, entered into a secret intrigue with the representatives of the American company for the purpose of violating the laws of public policy of the State of Illinois, it cannot be said, with any show of reason, that Kellogg, who was then in California and in total ignorance of what his agent was doing in Chicago, is equal in guilt with the American company. If wrong at all is to be imputed to Kellogg, it is only in a highly technical sense and limited degree. He is certainly less blameworthy than the American company. One of the exceptions to the rule that courts will not interpose to grant relief to either party to an illegal agreement where both parties stand in pari delicto is, that in some instances the party least blameworthy may, in furtherance of justice and sound public policy, obtain full affirmative relief. This principle is thus stated by Mr. Pomeroy in his work on Equity Jurisprudence (sec. 942), as follows: "Lastly, when the contract is illegal, so that both parties are to some extent involved in the illegality,—in some degree affected with the unlawful taint but are not in pari delicto,—that is, both have not, with the same knowledge, willingness and wrongful intent engaged in the transaction or the undertakings of each are not equally blameworthy,—a court of equity may, in furtherance of justice and of a sound public policy, aid the one who is comparatively the more innocent, and may grant him full affirmative relief by canceling an executory contract, by setting aside an executed contract, conveyance or transfer, by recovering back money paid or property delivered, as the circumstances of the case shall require, and sometimes even by sustaining a suit brought to enforce the contract itself, or if this be possible, by permitting him to recover the amount justly due by means of an appropriate action not directly based upon the contract. Such an inequality of condition exists, so that relief may be given to the more innocent part, in two distinct classes of cases: (1) It exists where the contract is intrinsically illegal and is of such a nature that the undertakings or stipulations of each, if considered by themselves alone, would show the parties equally in fault, but there are collateral and incidental circumstances attending the transaction and affecting the relations of the two parties which render one of them comparatively free from fault. Such circumstances are imposition, oppression, duress, threats, under influence, taking advantage of necessities or of weakness, and the like, as a means of inducing the party

to enter into the agreement or of procuring him to execute and perform it after it had been voluntarily entered into. (2) The condition also exists where, in the absence of any incidental and collateral circumstances, the contract is illegal but is intrinsically unequal; is of such a nature that one party is necessarily innocent as compared with the other; the stipulations, undertakings and position of one are essentially less illegal and blameworthy than those of the others."

But there is something else here. It must be borne in mind all the while that in this proceeding a court of equity is seeking to protect the public against an infringement of the public policy of the state, and having determined that the transactions in question in their purpose and inevitable tendency are to stifle competition and create a monopoly of a business impressed with a public character, the court will not be deterred from administering full relief by forms of procedure or technical rules which might control its action under other circumstances. Regard for the public welfare is the highest law of the land. (Broom's Legal Maxims, p. 1.) Pomeroy, in his work on Equity Jurisprudence (sec. 941), thus states that the principle now under discussion: "Even where the contracting parties are in pari delicto the courts may interfere from motives of public policy. Whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction, then relief is given to him. In pursuance of this principle and in compliance with the demands of a high public policy, equity may aid a party equally guilty with his opponent, not only by canceling and ordering the surrender of an executory agreement, but even by setting aside an executed contract, conveyance or transfer, and decreeing the recovery back of money paid or property delivered in performance of the agreement." The cases cited by the author in the footnotes fully sustain the text. Story's Equity Jurisprudence (13th ed. vol. 1, sec. 298), recognizes the same principle. This author says: "But in cases where the agreement or other transactions are repudiated on account of their being against public policy, the circumstance that the relief asked by a party who is particeps criminis is not, in equity, material. The reason is, that the public interest requires that relief shall be given, and it is given to the public through the party." The rule that courts will not interpose to grant relief when an illegal agreement has been made and both parties stand in pari delicto cannot be invoked by appellees as a defense in this case.

We have discussed the questions, both of law and fact, upon which the right of the appellants to relief depends. There are some other questions of minor importance treated in the briefs of counsel for appellees,—such as that appellants are not prosecuting the suit in good faith for their own benefit, and that there is a collusion between Kellogg and appellants,—which we have considered, but we do not deem these matters of sufficient importance to require discussion. From what has been said it follows that the decree of the circuit court is based upon a correct solution of the questions involved. That part of the decree which adjusts the equities of the parties is attacked by appellees on the ground that it proceeds from an erroneous decision of the questions involved. If the sale of stocks in question were void and no title passed, as the circuit court found and as we have sought to show, we perceive no objection to the extent of the relief granted or the methods adopted by the circuit court to adjust the equities between the parties. No other or better method of settling this controversy occurs to us and none is suggested or pointed out by appellees. The 15th of February, 1908, the date fixed by the decree of the circuit court from which time the various acts in the execution of the decree were reckoned, having passed, it is ordered that all acts which in the terms of said decree were to be performed within a given number of days from the 15th day of February, 1908, shall be performed in like manner as in said decree directed within a like number of days from the 15th day of April, 1909, and that said decree of the circuit court shall be executed in all respects as therein directed, except the 15th day of April, 1909, shall be substituted for the 15th day of February, 1908.

Believing that the decree of the circuit court does justice between the parties, enforces the law and upholds a sound public policy, and that there is no reversible error therein, the decree should be affirmed. The judgment of the Appellate Court for the First District is therefore reversed and the decree of the circuit court affirmed.

Appellate Court reversed, circuit court affirmed.

Ohio Bill to Place Telephone Companies Under Railroad Commission.

Representative Billingslea of the Ohio General Assembly has prepared a bill which he will introduce at an early date placing telephone companies under the jurisdiction of the Ohio Railway Commission. It seeks to compel interconnections, to prevent unreasonable rates and discrimination with a purpose of securing adequate service. It also seeks to prevent consolidations of competing telephone companies. The regulations contained in the bill are similar in many respects to the regulation of railroads by the railway commission.

One of the most important provisions of the bill provides that every company must print in large type and file with the commission price schedules showing all rates and charges and there shall be no change except on 10 days' notice. It is made unlawful for any company to receive or pay any rebate in order that discrimination might result. Competing companies are compelled to connect in order to produce a line to any toll point desired by a patron. A penalty of $100 is provided for a violation of the act. It is one of the most drastic telephone measures ever introduced in the Ohio legislature.

Representative Billingslea expects to push the bill to the proper committee. Much opposition will appear against the bill, which is believed to have no chances of passage.

Museum of Safety and Sanitation.

Announcement has just been made of the acceptance of the treasurership of the Museum of Safety and Sanitation by Frank A. Vanderlip. An executive office for the adminstrative and promotive work of the museum has been opened at the United Engineering Societies' Building, 29 West 39th Street, New York.

A committe on plan and scope includes: Prof. F. R. Hutton, Chairman; Dr. Thomas Darlington, Commissioner of Health Department of the City of New York; P. T. Dodge, President of the Engineers' Club; Wm. J. Moran, Attorney-at-Law, and Henry D. Whitfield, Architect.

Plans are being pushed forward along practicable lines to prevent the enormous loss of life and limb to American life and labor, through the Museum of Safety and Sanitation, where safety devices for dangerous machines and preventable methods of combatting dread diseases, may be demonstrated. Charles Kirchhoff, editor of The Iron Age, is the Chairman of the Committee of Direction; T. C. Martin, editor of The Electrical World, Vice-Chairman, and Dr. Wiliam H. Tolman, Director.

Rate Reductions for Alberta Government Telephones.

A general reduction in telephone rates for the government system in Alberta, Can., has been announced. The average reduction amounts to 25 per cent from the rates in force a month ago, which were also a reduction from the rates charged when the Bell company had a monopoly in that province. In certain cases the reductions amount to fully 50 per cent, but in other cases no reduction is made, the exception being business telephones in cities having more than 1,000 subscribers. However, in all cases reductions have been made for residence telephones. The announcement came most unexpectedly as no reduction had been promised by the government. Last year the government took over all the lines in the province owned by the Bell company, and then doubled the system. Plans have also been made for an extension program for the present year and on account of this large amount of construction to be done no one had the least expectation of lower rates being announced for a year or two at least.

Montana Thinks Well of Independent Telephone Company.

The success of the Montana Independent Telephone Company, of which Mr. T. S. Lane is managing director, is receiving widespread attention. In the *Montana Lookout* of February 6 was the following:

"The Independent Telephone Company of Butte has paid a 4 per cent annual dividend upon its stock, and put $20,000 into the sinking fund to meet bonds, according to announcements of its officers. It has been in business for fourteen months. The disastrous strike in which the Rocky Mountain Bell Telephone Company was involved at Butte and elsewhere for a year or more was most profitable to the Independent concern."

attention. Most of us appreciate the value of secure, substantial construction, both in the telephone office and in the wire plant. Its effect in reduced troubles and expense is very real. But some people have taken for granted that things must run down by their very nature; that all things need periodic rebuilding and overhauling and there is no escape from it. This is true, but the more ambitious have cherished the ideal of keeping all things in such good shape that they will not for a long time get bad enough to need replacing.

The run-down condition usually begins in a small way. Take the case of an open wire lead. All the wires are drawn to an even tension, look well, and give little or no trouble. Some man, in stringing a new circuit, is just a little careless and lets his wires sag a little more than the rest. Along comes another man who does the same, or perhaps a little worse. Or it may be that someone, desiring to make his own work seem good, pulls his new wires up till they sing like violin strings—regardless of the older wires, while the slack ones now sag more disreputably than ever. The little imps of "crosses" and "shorts" now nest among the cross arms, and the lead is condemned for complete overhauling long before its time.

Carelessness in handling parts of apparatus, such as screws, nuts, relays covers, etc., is responsible for much of the depreciation in apparatus. The use of pliers on small nuts, on which only a suitable wrench should be used, often damages the parts in a small way.

The effect of a neat and workmanlike job is to inspire respect. It tends to influence succeeding work for good. But if the work be left in a slovenly shape, it commands no respect, and induces the thought that "any old thing will do."

Each man must do his share in keeping all parts of the plant in good order. Remember that every time you leave a job with a "temporary" repair and fail to restore that part to its best condition, you are inviting the next man to do a little worse. You are starting the plant down hill. But every time you complete your work with a thoroughness and quality that make you proud to look at it afterward, you are influencing others to do as well. You are saving money for your company and making a record for yourself.

Where Strength is Weakness.

The Bell telephone company has, in the past two months, been doing a lot of bragging about the number of telephones connected with its lines. It is not only boasting of how many it has now, but is trying to get more. Where competition is keen, see how they are added:

Manager Lane, of the Independent company at Butte, a few weeks ago sued over a hundred people who had discontinued his service while in arrears. Thirty of these people said they had not paid because the Bell company had offered them free service for practically an unlimited period. Now, isn't it time for some of these Bell managers—who talk about the Independents being sinners, because they have given the public wrong ideas about the cost of telephone service—to look facts straight in the face, and stop being silly?

The financial reservoir furnished by the idle money of the East and West, concentrated in the eastern money market, may have a pretty large capacity. But a great many corporations go there to drink, and none should get the idea that it can drain off the whole supply into its own belly. Neither Bell nor Independent companies have yet seen the time when they could get enough money at reasonable rates to build for the telephone demand actually in sight. It will be years before the business will be developed to a point where money can be used to fill up old holes, instead of for digging new ones for poles and conduit. Let the managers at all competitive points continue to pile up the deficit-producing free service arrangements and the load will be too much for even the big, non-competitive, overcharged cities of the East to carry. In seeking a great number of stations, regardless of rates, the Bell managers are piling up a tremendous load which will surely break the spirit of the most vigorous executive when new competition forces rates at all points down to a basis which is fair in each town.

Forgetting, for a minute, the "natural monopoly" buncombe that the shrewd old-timers—who will soon be "has-beens"—have so long palmed off on better men, who have learned the truth by contact with new conditions, let any Bell manager ask himself: "Would it not be better for a telephone company to serve fifty per cent of the total number of subscribers in a city at honest, published rates and make a fair profit than to keep trying for all of the stations and score a net money loss every year?"

The Kellogg Company.

For the first time in a number of years this issue of TELEPHONY contains the advertising announcements of the Kellogg Switchboard & Supply Company. The reason, briefly stated, is that the Kellogg company has been regained by its original owners from Bell control, and is now again in Independent hands. While managed and controlled by representatives of the Bell interests, TELEPHONY excluded Kellogg advertising from its pages, and believed it to be the duty of this publication—as the exponent of Independent telephony—to warn Independents to have no dealings with that concern. At all times, however, TELEPHONY declared that if ever the Kellogg company reverted to Independent hands and again came under Independent control—where it belonged—this publication would welcome it back into the fold and recognize it as a factor in that great industry. This, too, was the position of the International Independent Telephone Association which, at various conventions, adopted resolutions to that effect. Such a position was only fair and just.

The time of the Kellogg company's return has now arrived. The company has been wrested from the Bell monopoly. It is back in the Independent ranks, and its owners and managers are to be congratulated on their great victory after many difficulties. Needless to say, the Independent field is equally to be congratulated. TELEPHONY joins in these congratulations, and takes pleasure in welcoming the Kellogg Switchboard & Supply Company back into the Independent ranks.

count. It is good policy to make the people who get the benefit of these stations pay the bills, and where this plan has been adopted it works in a manner gratifying alike to the druggists, the telephone company, and the telephone subscribers—in fact, to all but the class of people who want to get something at other people's expense.

Program of the Missouri Convention, May 19, 20, Coates House, Kansas City, Mo.

Following is the final program for the convention of the Missouri Independent Telephone Association:

WEDNESDAY, MAY 19TH.

Address of welcome—Hon. T. T. Crittenden, Jr., mayor of Kansas City.

Response to address of welcome—M. L. Golladay, president Missouri Independent Telephone Association.

Reading of minutes of last convention; reports of committees; appointment of regular and special committees; presentation of new business.

AFTERNOON SESSION, WEDNESDAY, MAY 19TH.

"Cost of Farm Service," D. C. Clark, Lockwood.

"How to Reduce Depreciation," H. C. Todd, Maryville.

Address—E. H. Moulton, President International Independent Telephone Association.

"From the Subscriber's Viewpoint," C. H. Petty, Nevada.

"Advantages of Toll Line Development by Local Companies," A. F. Adams, Joplin.

"Telephonically Speaking, How About It?" Kansas, Nebraska and Iowa, by their presidents.

WEDNESDAY EVENING, MAY 19TH.

Beginning promptly at 7:45 p. m. there will be a smoker under the leadership of the president and a committee having in charge a question box in which every one is requested to deposit written questions to be brought up for general discussion; the idea being to make this session an educational one, affording opportunity for discussion of technical subjects and experiences which will be of inestimatable value to every one.

THURSDAY, MAY 20TH.

Secretary and Treasurer's Report, G. W. Schweer, Windsor.

"The Business Man's View of Long Distance," Houck McHenry, Jefferson City.

"The Independent Telephone Publisher and Printer," Stanley S. Lichty, Editor, Western Telephone Journal, Vinton, Ia.

"Collecting and Its Success in One Exchange," S. D. Thompson, Cameron.

"The Cost of Operating a Mutual Company," J. N. B. Shelton, Mt. Vernon.

THURSDAY AFTERNOON, MAY 20TH.

"In Union There is Strength," W. B. Scruggs, Harrisonville.

"Field Notes," W. R. Barkdull, traveling secretary, Windsor.

Report of committees; miscellaneous business; election of officers; adjournment.

THURSDAY EVENING, MAY 20TH.

Banquet, 7:00 p. m.

Dr. S. T. Neill, Toastmaster.

Toasts.

"Our Future Prospects," Hon. H. D. Critchfield, Chicago.

"My Opinion of Mutuals—With Apologies," Wm. D. Reynolds, Pattonsburg.

"The Traveling Man's Troubles," Nelson J. Roth, Chicago.

"Long Distance for Everybody," C. J. Myers, Kansas City.

"The Lawyer as a Telephone Stockholder," Claude J. Bain, Trenton.

"The Printer's Art in Independent Telephony," Franklin H. Reed, Chicago.

"Telephone Reminiscences," Judge H. G. Orton, Princeton.

Missouri telephone men are to be congratulated on the progress they have been making, and so many valuable and practical features—to say nothing of a good time—have been laid out for this convention that it is likely to be the biggest kind of a record breaker. Every Independent officer and stockholder in the State owes it to himself to attend.

Kellogg Company Under Control of Independent Officers.

The Kellogg Switchboard and Supply Company, as a result of the persistent fight so courageously carried on by Mr. Francis W. Dunbar and his associates, is now finally and legally restored to the position of a prominent Independent manufacturer of telephone equipment and supplies.

In obedience to the final decree of the Illinois Supreme Court in the case of Francis W. Dunbar et al. vs. The American Telephone & Telegraph Company et al., as published in TELEPHONY Feb. 27, 1909, the American Telephone & Telegraph Company, on April 20, 1909, restored to its owner each and every certificate of stock of the Kellogg Switchboard and Supply Company.

On Tuesday, April 27, 1909, the stockholders of the Kellogg company met and elected the following Board of Directors:

Milo G. Kellogg, Francis W. Dunbar, Kempster B. Miller, Leroy D. Kellogg, J. B. Edwards, James G. Kellogg, Wallace L. DeWolf.

It is understood that Mr. DeWolf, who managed the company while it was under Bell control, during the period of litigation, was elected a director by cumulative voting of their shares by himself and a very few other stockholders, who had been in sympathy with his management and who, from the size of their holdings, are entitled to one representative on the Board of Directors.

The directors elected the following officers:

President, Milo G. Kellogg; vice president, Leroy D. Kellogg; secretary and treasurer, Seymour Guthrie; and the following executive committee: Leroy D. Kellogg, Francis W. Dunbar, J. B. Edwards.

Arkansas Convention at Little Rock, May 10, 11.

The convention of the Arkansas Independent Telephone Association is set for May 10 and 11.

The first day of the convention will be largely devoted to meetings of committees, with a banquet at 8 p. m. at the Marion Hotel. The program for the second day, Tuesday, May 11, is as follows:

10:00 a. m.—Convention called to order.

Address of Welcome, Hon W. R. Duley, mayor of Little Rock.

Response, F. W. Tucker, of Little Rock.

Secretary's Report, D. B. Anderson, Ozark, Ark.

Treasurer's Report, H. L. Bernard, Russellville, Ark.

AFTERNOON SESSION.

Assemble at 2:00 p. m.

Address, "Advantages and Disadvantages of an Automatic Telephone Plant," S. A. Daniels, Jonesboro, Ark.

Address, "Development of Toll Territory," U. T. Stuhl, Siloam Springs, Ark.

Address, "Benefits of Organization of the Independent Telephone Operators," Conrad Elskin, Paris, Ark.

Address, "Trials and Hardships of Pioneering in the Independent Telephone Field," P. C. Ewing, Little Rock.

Address, "How to Get All the Independent Operators Interested in the Association," W. J. Savage, Warren, Ark.

Other papers and discussions.

Report of Committee on Resolutions.

Report of Special Committees.

Report of Nominating Committee.

Election of Officers.

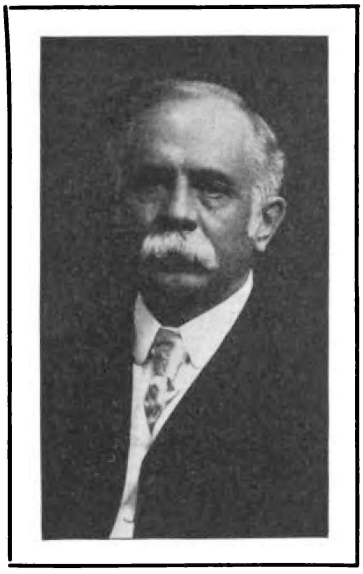
New and Unfinished Business.

Future Independence of Kellogg Switchboard & Supply Company Assured.

The following communication is self-explanatory:

"To the Editors of TELEPHONY:

"It seems to be appropriate for me, at the present time, to state for publication what is the position of the Kellogg Switchboard and Supply Company with reference to the telephone situation. I will state that the company is entirely freed from the hold of the Bell company, and it will remain so, and will be henceforth operated and managed in good faith as an Independent telephone manufacturing company. I make this statement as the owner of over two-thirds of the capital stock of the company.



Mr. Milo G. Kellogg.

"Details as to who are the present board of directors and the officers of the company have been furnished you—I will therefore not repeat this information.

"In conclusion, I desire to express my appreciation of the work of F. W. Dunbar, Kempster B. Miller and George C. Burlingame as complainants in the litigation which brought about or made possible the above result."

(Signed) Milo G. Kellogg.

Fourth Missouri District Meeting.

The second annual meeting of the Fourth District Missouri Independent Telephone Association, was held at Hannibal, April 27.

The meeting was called to order by Hon. J. F. Davidson of Hannibal, who acted as president in the absence of Mr. C. O. Raine.

Following is the program:

"Depreciation; Do We Realize What It Actually Is?" C. A. Brunson, Palmyra.

"Service and Its Requirements," A. E. Marmaduke, Hannibal.

"Cost of Farm Service," Harry E. Couch, Center.

"Collecting; Its Successes and Failures," D. S. Thomas, Paris.

"Is It Profitable for a Small Exchange to Own Its Farm Lines?" C. O. Raine, Canton.

"Seeing Ourselves as Others See Us," W. H. Elliott, Monroe City.

"The Obligation We Should Have for the State Association," W. R. Barkdull, Windsor.

"Is the Mutual Plan on a Permanent Basis?" F. S. Calwell, New London.

"Is It Extravagant to Use Standard Equipment?" H. G. Rodman, Kahoka.

"Why Should Independent Men Use Independent Apparatus?" H. L. Gary, Macon.

"Importance of Toll Lines," J. A. Wheeler, Hunnewell.

"Benefits of District Meetings," A. C. Miller, Frankford.

"From the Subscriber's Viewpoint," T. S. Scott, Philadelphia.

"Why Bookkeeping is So Important in the Telephone Business," A. F. Bennett, Macon.

Effective Advertising of the Benefits of Competition.

Mr. Theodore Thorward, president of the South Bend Home Telephone Company, is one of the most aggressive and successful Independent telephone men in Indiana. His competitors have recently been particularly active in making promises to the people of South Bend, and it became necessary to show the real motive of this activity, and general character of the competing organization's business methods. The heading of a full page advertisement is reproduced, and following is the matter filling the lower half of the page, each letter having been framed separately to occupy one third of the width of the page:

THE TERRE HAUTE SITUATION.

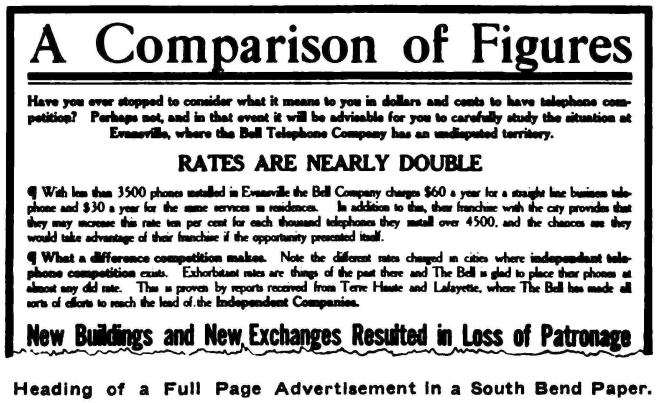
Mr. Theodore Thorward,

President Home Telephone Company, South Bend, Ind.

Dear Sir:

Replying to your favor of the 23rd inst., relative to the telephone condition existing in Terre Haute, beg to advise that the Central Union Telephone Company's new building was erected three years ago this summer and they moved into it about July 1st, 1906. At the time of moving in they had 1600 subscribers. They made a very strong canvass during that Fall, as we were not in a position to meet competition, having not completed our plant at that time. In this manner they increased their list to about 2500 subscribers. We moved into our new building and cut into our new service, October, 1906, at which time we had 2,300 subscribers. We then commenced an active campaign and for six months solicited business, since which time we have done very little soliciting, only seeing those that called into the office and ordered service.

Last November we had 4,000 subscribers, the Bell having 1,875; in other words, they lost in two years about 600 subscribers. Immediately after the Presidential Election last fall the Bell commenced an active campaign and have carried it clear through the winter and have now probably in the neighborhood of about 2,800 subscribers, or an addition of about 1,000 subscribers to what they had last fall. Our list has gradually increased until we have now


A Comparison of Figures

Have you ever stopped to consider what it means to you in dollars and cents to have telephone competition? Perhaps not, and in that event it will be advisable for you to carefully study the situation at Evansville, where the Bell Telephone Company has an undisputed territory.

RATES ARE NEARLY DOUBLE

¶ With less than 3500 phones installed in Evansville the Bell Company charges $60 a year for a straight line business telephone and $30 a year for the same services in residences. In addition to this, their franchise with the city provides that they may increase this rate ten per cent for each thousand telephones they install over 4500, and the chances are they would take advantage of their franchise if the opportunity presented itself.

¶ What a difference competition makes. Note the different rates charged in cities where independent telephone competition exists. Exhorbitant rates are things of the past there and The Bell is glad to place their phones at almost any old rate. This is proven by reports received from Terre Haute and Lafayette, where The Bell has made all sorts of efforts to reach the head of the Independent Companies.

New Buildings and New Exchanges Resulted in Loss of Patronage

Heading of a Full Page Advertisement in a South Bend Paper.

4,350. In their campaign they have put telephones in for anybody that would accept them on any terms that the people might dictate, ranging from nothing to their regular prices. In many cases people who have become subscribers of theirs, never were known to pay their bills. On the other hand, this, our company, has pursued the same policy throughout this canvass that we have had for