

share, and the said Mendez I. Cohen may deliver up three shares of his stock to be cancelled, so that the value of said four shares may be divided among the other stockholders.

Mendez I. Cohen, by his answer, under oath, sets up the defence that he is a *bona fide* holder and purchaser of the stock held by him in the said theatre, for value paid, and without notice, knowledge or belief of the existence of any arrangement or understanding between the said B. I. Cohen and the other trustees at the time of his purchase, and that he is not responsible in any way for the failure of the said B. I. Cohen, to comply therewith if any be established. He admits that he knew from the transfer books, that the trustees, other than B. I. Cohen, had stock in their names, and no doubt he has so stated. He further admits that he purchased stock from the house of J. I. Cohen & Brothers, in which the said B. I. Cohen was interested as a partner, and it may be that his interest in the stock they held ascertained by his interest in that house exceeded four shares, but with that he submits he has no concern and has no knowledge.

The proof taken, and the other proceedings in the case upon this petition, and the exceptions, are sufficiently stated in the opinion of the Chancellor.]

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THE CHANCELLOR :

This case comes before the court upon exceptions to the report of the Auditor, but the agreement of counsel filed on the 12th inst., reduces the questions in controversy to two.

The first of these, and the only one which has been argued, has respect to the ownership of the two shares of stock in the Holiday Street Theatre, the proceeds of the sales of which, made under a decree of this court, are now to be distributed. The shares in controversy are designated by the numbers 44 and 76, and were together with thirty-three other shares of like stock transferred to Mendez I. Cohen, by J. I. Cohen, Jr. & Brothers, on the 14th of June, 1841.

It appears by the transfer book that shares numbered 44 and 76, were transferred to B. I. Cohen, who was a partner in the