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Petition of Appeal.

COURT OF ERRORS AND APPEALS.

Between

FREDERICK K. FISH,
Complainant,

and

THE HARRISON MILLING COMPANY, A. GOULD HARRISON and EVELYN L. HARRISON,
Defendants.

To the Honorable Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Frederick K. Fish, the appellant in the above-stated cause, respectfully shows:

That your petitioner finds himself aggrieved by a Final Decree made in the Court of Chancery by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, bearing date the 17th day of April, in the year one thousand nine hundred and seventeen, wherein the said Frederick K. Fish was complainant and A. Gould Harrison, Evelyn L. Harrison and the Harrison Milling Company were defendants, in this respect, to wit: That the said decree judges that the said A. Gould Harrison is the legal owner of fifteen (15) shares of the stock of the Harrison Milling Company, which said stock was purchased with the check of the said Harrison Milling Company, and denies the relief prayed for in the Bill of Complaint in said cause, that the said

stock to be the property of the said Harrison Milling Company and transferred and delivered to said Harrison Milling Company; that the sum of Eight hundred and sixty-eight dollars and fifty-eight cents ($868.58) is the full amount of the indebtedness from the said defendant, A. Gould Harrison, to the said Harrison Milling Company, and your petitioner humbly appeals from those parts of said decree as aforesaid, upon the ground that the same is erroneous, for that it appears from the record in said cause that the said fifteen (15) shares of stock were purchased with the funds of the said Harrison Milling Company, and were therefore its property; that the said A. Gould Harrison is indebted to the said Harrison Milling Company for moneys misappropriated from the treasury of said company to a large amount in excess of the said sum of eight hundred and sixty-eight dollars and fifty-eight cents ($868.58). Your petitioner therefore prays that the said decree of the said Chancellor may be in particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just.

EDWARD MAXSON,
Solicitor and of Counsel for Complainant.

Amended Bill of Complaint.

IN CHANCERY OF NEW JERSEY:

Humbly complaining showeth unto your Honor, that your orator, Frederick K. Fish is a stockholder and the owner of forty (40) shares of the capital stock of the defendant the Harrison Milling Company, a corporation organized under and by virtue of the laws of the State of New Jersey on the 15th day of July, 1899, for the purpose of manufacture and sale of grain products and for such other lawful purposes as were granted under its Charter.

And your orator further shows that there are issued and outstanding on the books of said defendant, the Harrison Milling Company, eighty (80) shares of its capital stock, of the par value of one hundred ($100.00) dollars per share, held in the names of the following persons:

In the name of your orator 40 shares, as aforesaid;

In the name of the defendant A. Gould Harrison 24 shares; and

In the name of the defendant Evelyn L. Harrison, wife of A. Gould Harrison, 16 shares.

And your orator further shows that the said defendant A. Gould Harrison is the son of a former business associate of your orator, and that previous to the discovery of the fraudulent and illegal acts hereinafter complained of your orator had complete confidence in his business integrity and honesty.

And your orator further shows that he became connected with the said Harrison Milling Company in 1903 by the purchase of said forty (40) shares of the capital stock of said Company for the sum of four thousand ($4,000.00) dollars in cash.

And your orator further shows that at a meeting of the said Harrison Milling Company held on September 22, 1903, he was elected a Director and President.

And your orator further shows that on November 18, 1905, acting as such Director and President, he called a meeting of the Directors of the said Company at the home of the defendant A. Gould Harrison at Montclair, New Jersey, and that at said meeting the said A. Gould Harrison informed your orator that he had misappropriated the funds of said Corporation in the sum of from four thousand five hundred ($4,500.00) dollars to four thousand six hundred ($4,600.00) dollars; and that such misappropriation had been made because the said A. Gould Harrison had been unable to provide for his family on the salary received from said Corporation.

And your orator further shows that being the only person in interest other than said A. Gould Harrison and his wife, the said Evelyn L. Harrison, and believing in the representations of the said A. Gould Harrison, your orator thereupon consented that a resolution be passed by the Board of Directors releasing said A. Gould Harrison from the payment of the amount which he had previously overdrawn and also increasing his salary from twenty ($20) to forty ($40) dollars per week.

And your orator further shows that since the beginning of this action, and after the discovery by your orator of the acts herein complained of, your orator demanded that an expert accountant be employed to examine the books of said Corporation, and that your orator be given an accounting. That the said A. Gould Harrison and Evelyn L. Harri-

son being a majority of the Board of Directors of said Corporation, and in control and being antagonistic to your orator's interests, refused to permit such an examination, but consented that your orator, at his own expense, might have such an examination of the books.

And your orator further shows that he thereupon, at a large expense, employed an expert accountant to examine the books of said Corporation, and that such examination disclosed the fact that on the 18th day of November, 1905, the said A. Gould Harrison was indebted to the Company in the sum of four thousand one hundred and thirteen dollars and seventeen cents ($4,113.17), and that subsequent to the passage of the above described resolution the said A. Gould Harrison increased his misappropriation, or overdraft, by the sum of four hundred and thirty-nine dollars and forty-six cents ($439.46), and that he the said A. Gould Harrison thereafter fraudulently and deceitfully, and in violation of the rights of your orator and of said Corporation, had a resolution prepared releasing him the said A. Gould Harrison from the payment of the overdraft of four thousand five hundred and fifty-two dollars and sixty-three cents ($4,552.63).

And your orator further shows that the said A. Gould Harrison, having entire control of the Minute Book of said Corporation caused said resolution to be entered therein thereby deceiving and defrauding your orator and said Corporation.

And your orator further shows that on or about the 20th day of October, 1909, your orator took a residence in Montclair, New Jersey, and after that time became actively interested in the management and direction of the affairs of said Cor-

poration, and that after this time it was agreed that the checks of said Corporation be drawn by said A. Gould Harrison, as Treasurer, and countersigned by your orator, as President. And that the said checks were so drawn and countersigned according to said agreement until about the month of February, 1910, when the said A. Gould Harrison called at the bank where the funds of said Corporation were on deposit and informed its officials that there was no resolution of said Corporation requiring such counter signature, and that thereafter he alone would sign said checks.

And your orator further shows that after February, 1910, aforesaid, your orator had no further knowledge of, nor control over the disbursements of the funds of said Corporation, and that said A. Gould Harrison and his wife Evelyn L. Harrison, having control of said Corporation as a majority of the Board of Directors, and being in collusion to defraud your orator of his rights, have continued to mismanage said Corporation and misappropriate its funds.

And your orator further shows that previous to July 1st, 1903, the capital stock of said Corporation issued and outstanding consisted of forty (40) shares; thirty-eight (38) of which were held by one Hugh Mullen, now deceased, one (1) share by A. Gould Harrison, and one (1) share by Evelyn L. Harrison, wife of A. Gould Harrison. That after the death of said Hugh Mullen, your orator is informed, and believes, that his interest in said Corporation was divided as follows:

To his daughter, Evelyn L. Harrison, 15 shares;

To his daughter, Ida M. Beyea, 15 shares; and

To his wife, 8 shares.

And your orator further shows that the examination of the books by the expert accountant employed by your orator, as aforesaid, disclosed the fact that the said A. Gould Harrison purchased and had transferred to him the fifteen (15) shares of stock held by the said Ida M. Beyea, and that the said A. Gould Harrison paid for said stock by the check and out of the Treasury of said Corporation, and that such misappropriation of the funds of said Company was fraudulent, and without the knowledge or acquiescence of your orator.

And your orator further shows that the expert examination of the books of said Corporation, as aforesaid, further disclosed the fact that the said A. Gould Harrison, since the 18th day of November, 1905, has further misappropriated the funds of said Corporation in the sum of four thousand ($4,000.00) dollars or more, in addition to the sum drawn from the Treasury of the Company in payment for the stock of said Ida M. Beyea, and that said overdrafts were fraudulent and without the knowledge or acquiescence of your orator.

And your orator further shows that on September 8, 1908, a meeting of the Board of Directors of said Corporation was purported to be held, of which said meeting your orator had no notice, and at which he was not present. That at said meeting a resolution purporting to be offered by your orator was passed by the votes of said A. Gould Harrison and Evelyn L. Harrison, his wife, releasing the said A. Gould Harrison from misappropriation from the funds of said Corporation, the amount of which misappropriation was left blank in said resolution.

And your orator further shows that on the 19th day of July, 1910, a meeting of the Board of Directors of said Corporation was held at which meet-

ing your orator was present. That at this meeting, and against your orator's protest, a resolution was passed by the votes of the said defendants A. Gould Harrison and Evelyn L. Harrison, his wife, amending the above described resolution of September 8, 1908, by filling in the blank left therein, for the amount of overdraft of said A. Gould Harrison, with the sum of two thousand and sixteen dollars and fifty-five cents ($2,016.55) ; all of which was in violation and fraud of the rights of your orator 20 and said Corporation.

And your orator further shows that the Minute Book of said Corporation contains the Minutes of a meeting held on the 2nd day of September, 1907, at which said meeting a resolution purporting to be offered by your orator was passed, releasing the said A. Gould Harrison from a further misappropriation from the funds of the Company in the sum of three hundred and eighty-six dollars and seventy-four cents ($386.74). That your orator has no recollection of the holding of such a meeting, but that if such a meeting was held and at- 30 tended by him, your orator did not offer a resolution as above set forth, and that the entry of such a resolution by the said A. Gould Harrison was under his direction and was a fraud of the rights of your orator and said Corporation, and without your orator's knowledge or acquiescence.

And your orator further shows that the aforesaid expert examination of the books of said Corporation disclosed the fact that at the time of said examination the said defendant A. Gould Harrison had misappropriated from the funds of said Corporation the further sum of eight hundred and six- 40 ty-five dollars and ninety-one cents ($865.91).

And your orator further shows that during the

period in which your orator has been a stockholder of said Corporation only two dividends have been declared upon the stock; one of six (6%) per cent., which was paid to your orator, and another of five (5%) per cent., which your orator has never received; and your orator is informed, and believes that the said dividend of five (5%) per cent. was paid to all the then stockholders of the Company except your orator.

And your orator further shows that during the period from the 1st of July, 1903, to the 20th of October, 1909, your orator had no active part in the management or direction of the affairs of the said Corporation, but that relying upon his friendship for and the honesty and business integrity of the said A. Gould Harrison, your orator permitted him, the said A. Gould Harrison, to manage and conduct all of the affairs of said Corporation. That during the period aforesaid, and while the management of the Company was under the control and direction of the said A. Gould Harrison your orator extended to said Corporation a credit averaging about ten thousand ($10,000.00) dollars per month.

And your orator further shows that since the expert examination of the books and the disclosure thereby of the gross mismanagement of the affairs of said Corporation by the said A. Gould Harrison and Evelyn L. Harrison, his wife, and the flagrant misappropriation of the funds of the Corporation by the said A. Gould Harrison, he, your orator, has endeavored to secure an equal representation on the Board of Directors of the said Corporation, and an equal part in the management of its affairs; and that in violation of your orator's rights and by reason of the collusion and

fraud of the said A. Gould Harrison and Evelyn L. Harrison, his wife, your orator since the first of April, 1910, has been denied any voice in the management of said Corporation, and his protests against such mismanagement, and against the misappropriation of the funds of said Corporation have been ignored.

And your orator further shows that since the first of April, 1910, your orator has received no income from his investment in the stock of said Corporation.

To the end, therefore, and inasmuch as your orator is without adequate relief in any other Court, that the said A. Gould Harrison and Evelyn L. Harrison and the Harrison Milling Company may without oath, an answer or answers under oath being hereby waived, full, true and perfect answer make in the premises, and that by the order and decree of this Honorable Court the said A. Gould Harrison may be enjoined and restrained from further appropriating the property of or drawing any money or checks of the said Company for his own uses or purposes, or from paying out or disposing of any moneys belonging to the Company or disposing of any of its property, either in his capacity as treasurer or otherwise, and that an account may be taken of the amount due from him to the Company because of any improper, illegal or irregular disposition of the funds from the property of the Company by him, and of the condition of the finances of the said corporation and whether the same is solvent or not, and if solvent, the assets and liabilities therefor; and that the said A. Gould Harrison be decreed to pay to the said Corporation, the Harrison Milling Company such sum or sums as are shown to be due from him to said Corporation;

and that it further be decreed that he transfer and deliver to the defendant, the Harrison Milling Company the fifteen (15) shares of stock purchases from the said Ida M. Beyea with the funds of the said Corporation as hereinbefore set forth; and that your orator have such other and further relief in the premises as to this Honorable Court may seem equitable and just.

May it please your Honor, the premises considered, to grant unto your orator not only the State's writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said A. Gould Harrison, restraining him as hereinabove prayed, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court to be directed to the said Evelyn L. Harrison, A. Gould Harrison and the Harrison Milling Company and each of them, commanding them and each of them by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray.

EDWARD MAXSON,
Solicitor and of Counsel
With Complainant.

10 *Amended Bill of Complaint*

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

FREDERICK K. FISH, the above-named complainant, being duly sworn according to law, on his oath saith that he has read the above bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters that are therein stated to be on his information or belief, and as to those matters he believes it to be true.

20 F. K. FISH.

Sworn and subscribed before me }
this 6th day of March, 1911. }

ADELE S. HONIGSBERG,
Notary Public,
N. Y. County No. 217.

On Bill, &c., Final Decree.

IN CHANCERY OF NEW JERSEY.

30

Between
FREDERICK K. FISH,
Complainant,
and
A. GOULD HARRISON, *et als.*,
Defendants.

40 This cause coming on to be heard by the Court in the bill of complaint, amended bill, answers and replications filed in the cause, and on the proofs taken before the Court in the presence of Edward

Maxson, Esquire, of counsel for the complainant, and Robert H. McCarter, Esquire, and J. H. Harrison, Esquire, of counsel for the defendants; and by order of this Court dated July 29, 1914, the matter having been referred to Harry N. Reeves, Esquire, one of the masters of this Court, to take and state an account from November 18, 1905, between A. Gould Harrison and the Harrison Milling Company, ascertaining and reporting how much of the funds, if any, belonging to the company, A. Gould Harrison has appropriated to his own use or purpose, either in his capacity as treasurere or otherwise; and to ascertain and state the amount due from him to the company because of any improper, illegal or irregular disposition made by him of the funds or property of the company; and to take testimony for the Court as to whether or not fifteen shares of the capital stock of the company, purchased by him with the check of the Harrison Milling Company, were bought with the funds and paid for out of the treasury of the company; and the said master, by his report dated May 10, 1915, having ascertained and stated that the amount due from said A. Gould Harrison to the Harrison Milling Company because of any improper, illegal or irregular disposition of the funds or property of said company, is the sum of $868.58, with interest from August 24, 1911, and that, in arriving at said amount, said master had not given said A. Gould Harrison any credits for salary due to him, which he did not draw at the rate of $3000.00 per year commencing October 1, 1909; and the said master, in accordance with the terms of said order of reference, having submitted to the Court the testimony taken for the Court as to whether or not fifteen shares of the capital stock of said Harrison Milling Company purchased by A. Gould Harri-

son with the check of the defendant, Harrison Milling Company, was bought with the funds and paid for out of the treasury of said company; and the complainant having filed exceptions to said report, and the Court having considered the same, having heard and considered the arguments of counsel thereon, and being of the opinion that said report should in all things be confirmed; and the Court having considered the proofs and exhibits taken in open Court and the testimony taken by the master as to whether or not the fifteen shares of the capital stock of said Harrison Milling Company purchased by said A. Gould Harrison from Ida M. Beyea were bought by said Harrison with the funds and paid for out of the treasury of said company; and it appearing to the Court that said shares of capital stock were not purchased by said Harrison with funds of said company, but were purchased by said A. Gould Harrison with funds belonging to him;

It is on this 16th day of April, 1917, on motion of Church & Harrison, Esquires, solicitors of the defendants, ORDERED, ADJUDGED and DECREED, and the Chancellor does hereby ORDER, ADJUDGE and DECREE that the report herein of Harry N. Reeves, Esquire, Special Master, dated May 10, 1915, and all the matters and things therein contained to stand, in all things, confirmed, according to the true tenor and meaning thereof.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in respect to the fifteen shares of the capital stock of Harrison Milling Company purchased by said A. Gould Harrison from Ida M. Beyea, neither complainant nor said Harrison Milling Company is entitled to any right, title or interest therein, and the title of said A. Gould Harrison in and to the same, and every part thereof,

is hereby determined, fixed and settled, and declared to be good.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the injunctions and restraining orders heretofore isued herein restraining said A. Gould Harrison from the sale and disposition of said fifteen shares of stock, be and the same are hereby dissolved and vacated.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that said defendant, A. Gould Harrison, pay to the Harrison Milling Company, forthwith the sum of $868.58, with interest from the 24th day of August, 1911.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the solicitor for the complainant be allowed the sum of five hundred dollars as a counsel fee in this suit, together with his cost to be taxed, and that the solicitor of the defendant be also paid a counsel fee of five hundred dollars.

E. R. WALKER,

C.

Respectfully advised—Vivian M. Lewis, V. C.
A true copy—Robert H. McAdams, Clerk.

On Petition &c., Answer.

COURT OF ERRORS AND APPEALS.

Between

FREDERICK K. FISH,
Appellant,

and

THE HARRISON MILLING COMPANY, A. GOULD HARRISON and EVELYN L. HARRISON,
Respondents.

The answer of the above-named respondents to the petition of appeal of the above named appellant.

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the seventeenth day of April, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, and also allowing to Edward Maxson, Esq., solicitor and counsel of complainant, the sum of five hundred dollars ($500) as and for a counsel fee, and also allowing to Church & Harrison, Esqs., solicitors and of counsel with defendants, the sum of five hundred dollars ($500) as and for a counsel fee; but as to the substance and form of the decree, these respondents pray to refer thereto when the same shall be produced. And these respondents are advised and believe the said decree is agreeable to equity, and pray that the same may be affirmed, with costs to be adjudged to these respondents.

CHURCH & HARRISON,
Solicitors for and counsel
with respondents.

Bill for Restraining Order and to Appoint a Receiver.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK K. FISH,
Complainant,

and

A. GOULD HARRISON, EVELYN L. HARRISON and the HARRISON MILLING COMPANY,
Defendants.

Transcript of testimony taken in the above-entitled cause, before Hon. VIVIAN M. LEWIS, Vice-Chancellor, at the Chancery Chambers, Prudential Building, Newark, New Jersey, on the thirty-first day of July, 1912, at 10:30 A. M.

Appearances:

EDWARD MAXSON, Esq., for the Complainant;

CHURCH & HARRISON, Esqs., represented by Mr. J. HENRY HARRISON, and ROBERT H. MCCARTER, Esq., for the Defendants.

Mr. Maxson: This is a bill asking an accounting from the Secretary and the Treasurer of the company, and that fifteen shares of stock which the complaint alleges were purchased out of the treasury and by the check of the corporation, be transferred and delivered to the corporation.

The Court: Has the defendant stated an account?

Mr. Maxson: No, sir.

The Court: Therefore, it is on the original bill, as I understand.

Mr. McCarter: There has been no stated account.

Mr. Maxson: The original bill filed about a year previous to the filing of the amended bill was, as I understand it, withdrawn, after demurrer, and on consent of the parties.

The Court: The demurrer was sustained?

Mr. Maxson: Demurrer was interposed to the amended bill, and that was overruled.

The Court: So we are on the amended bill and not on the original bill?

Mr. Maxson: Yes, sir.

4283—TWO

The Court: You are going to establish your right to account first, I understand.

FREDERICK K. FISH, sworn in his own behalf, testified as follows:

Direct examination by Mr. Maxson:

Q. You are the complainant in this suit? A. Yes, sir.

Q. And you are a stockholder of the Harrison Milling Company, one of the defendants? A. Yes, sir.

Q. About when did you purchase your stock? A. Along about July 1st, 1903.

Q. And how many shares did you buy? A. Forty shares.

Q. What is the total stock of the company issued? A. Eighty shares originally.

Q. Do you know how it is held? A. It was held at that time—40 shares were held by myself, and I think 19 shares by Mrs. Evelyn Harrison, and 1 share by A. Gould Harrison, and the remaining

shares by a man named—well, it was his brother-in-law.

Q. At the time you purchased your interest in the company, as you recall it, then the only interest held by the defendants, A. Gould Harrison and Mrs. Harrison, his wife, was 19 shares in Mrs. Harrison's name, and one in the name of A. Gould Harrison? A. I think so.

Q. The balance was held by someone else? A. Yes, sir.

Q. Were you ever actively connected with this company? A. No, sir, only I was elected President of the company—simply a nominal position.

Q. About when—do you recall? A. Along in October, 1903, I think.

Q. And how long did you continue as President? A. Up till 1910—July 19, 1910.

Q. And during that period did you draw a salary from the company? A. A portion of that period I drew a salary for, I think, four or five years, four years, I think—of $100 a month.

Q. During what period—do you recall? A. I could tell by looking at the date of the minute—I think it was November 19, 1905.

The Court: This is the original hearing, I suppose?

Mr. Maxson: Yes, sir.

The Court: The material evidence now is merely a right to an account?

Mr. Maxson: Yes, sir.

Q. You continued to draw $100 a month for about four years from that date? A. Yes, sir, from four to five years.

By the Court:

Q. From 1905 up to 1909? A. Yes, sir.

Frederick K. Fish—By Complainant—Direct

Further direct:

Q. Now, during the time you were drawing your salary, was your connection with the company different from the previous time as a stockholder; did you have any active participation in the affairs of the company? A. No, sir, no more than when I first originally went in.

Q. But there was a period when you were out there in Montclair? A. Yes, sir, that was in 1910.

Q. And were you drawing a salary at that time? A. We voted for a salary of $250 a month apiece, to take effect in September.

Q. You say "we"—— A. I mean Mr. Harrison and myself.

Q. And that salary was to go to you and Mr. Harrison? A. Yes, sir.

Q. $250 to each of you? A. Yes, sir.

Q. How long did you draw that? A. Up until April 1st, 1910—five or six months.

Q. And since that time have you had any active connection with the company? A. None whatever.

Q. Now, when you first became connected with the company, did you have any conversation with the defendant, A. Gould Harrison, about any overdraft by him from the treasury of the company? A. None whatever.

Q. Did he ever talk to you about overdraft? A. Not until November 19, 1905—the minute just referred to, 1905.

Q. Can you so refresh your recollection that you can testify from memory by looking at this minute in the book as to the exact date? A. (Witness examines a book.) That minute is not correct.

Mr. Maxson: I consent that that be stricken out.

The Court: On what ground?

Mr. Maxson: I have asked him to refresh his

recollection and give the date of this overdraft when he first knew it from an inspection of this minute.

The Court: That must stand.

A. The date of the minute is correct.

Q. Can you, from memory, after refreshing your recollection from an inspection of this book, testify the date that you first heard about any overdraft? A. That was the date I first heard.

Q. Is this the minute book, do you know, of the corporation?

Mr. McCarter: We will admit it is the minute book.

By the Court:

Q. Who kept it?

Mr. McCarter: It was kept some of the time by Mr. Coleman, and some of the time it was kept by the gentleman on the witness stand, who, apparently, does not recognize his own handwriting; and some of the time it was kept by Mr. Harrison, the defendant.

The Court: Just answer the question—you have looked over the book.

Q. (Question read.) A. I have seen that minute book so little that I could not swear whether it is the minute book of the corporation or not.

Further direct:

Q. You made some entries in your own handwriting? A. Yes, sir.

Q. Do you find them? A. No, sir—yes, that is the minute book.

Mr. Maxson: I ask that that be marked for identification.

Frederick K. Fish—By Complainant—Direct

Marked "C-1 for identification, C. E. R. July 31, 1912."

Q. Now, will you please state what the conversation was that you had with the defendant, A. Gould Harrison, on or about the 18th day of November, 1905? A. He stated to me at the meeting which took place at his house that he had been drawing a salary of only $20 a week, and that he could not live on that salary, and that he had been obliged to overdraw his account; I asked him how much he had overdrawn, and he stated he did not know exactly. "Well," I said, "how much do you figure that you are behind?" and he said, "Between $4,500 and $4,600."

Q. Anything further? A. And I stated to him that I was willing to write off that amount and give him credit for it, and his salary was to be increased to $40 a week, and in lieu of which I was to receive $25 a week salary from the company.

Q. And did you offer a resolution, or was a resolution offered at that time? A. I made the motion that the amount be written off.

Q. And giving the amount? A. Between $4,500 and $4,600.

Q. And at that time do you know whether the minute was entered in the book or not? A. I do not.

Q. When did you first see this minute of November 18, 1905? A. The first I ever saw that minute was along the latter part of October or the fore part of November, in 1909.

Q. And what directed your attention to it—do you recall? A. Yes, sir; I had noticed while I was in Montclair; I had moved from New York to Montclair to take active interest in the business; I noticed that the concern was apparently short of funds, and I could not understand it, and I asked

Mr. A. Gould Harrison how his account stood; I began to think there was something radically wrong somewheres, and I wanted to know, if possible, in order to see if I could not locate where this money was; and he told me he had overdrawn his account from eight to ten thousand dollars, and that he was not in a position to pay it.

Q. Then, did you look at this minute book? A. Then I asked the bookkeeper to give me a statement of his account, and he rendered me a statement, but it did not agree at all with Harrison's. It did not show the several thousand dollars that Harrison told me that he was in arrears; and for several days I wondered in my mind where that discrepancy could be, when, all of a sudden it struck me that there was a possibility that this amount of money which I had written off on November 18—the $4500—would be a factor in it, so I asked the bookkeeper where the minute book was, and he told me he had never seen it himself, but that it was in the safe; so, at last, he found it for me, and that is the first that I had seen the minute book.

Q. Do you recall the manner in which that resolution was worded? A. It was very brief; it was simply a thought—in a measure—of an informal meeting; while it was true that Mr. Harrison and his wife and I were there, it was simply an understanding on our part that he was to have the privilege of writing off—there was no particular language used in connection with it.

Q. Now, during the years—the period between the time when you bought your stock in the company and the time when you began to draw a salary, were you doing anything in connection with the company at all? A. I had given them a line of credit from eight to thirteen thousand dollars in money, right along, for these two years.

Q. In what line? A. In purchases of grain.

Frederick K. Fish—By Complainant—Direct

Q. You are a grain merchant in the City of New York? A. Yes, sir.

Q. During that period were you going out to the factory? A. I went out, I suppose, in all probability, not over twice a year.

Q. How long did you live in Montclair? A. From September, 1909, till September, 1910.

Q. And during that time you were actively engaged with the company? A. Not up till September, 1910—up until April 1st, 1910.

Q. Subsequent to the time when you consented that the overdraft of between $4500 and $4600 be crossed off in Mr. A. Gould Harrison's favor, did you ever consent to any other draft? A. None whatever.

Q. Did you ever participate in any meeting where a resolution was offered to strike off any overdraft charged up to Mr. Harrison? A. No, sir.

Q. I show you an entry in the minute book marked for identification for complainant "C 1," on page 29, and the lower entry dated September 2d, 1907, and ask you whether you attended that meeting? A. I may have attended a meeting of that date.

Q. And was any such resolution as that offered while you were there? A. It certainly was not.

By the Court:

Q. Does that relate to overdrafts, that resolution; you had better point it out to the solicitors. A. (No answer.)

Further direct:

Q. I direct your attention to page 30 of the same book, marked for identification, and ask you whether you attended a meeting on September 8, 1908? A. I did not.

Q. Now, after the last conversation that you have told about, when Mr. A. Gould Harrison told you that he was in arrears with the company eight or ten thousand dollars, what did you do, if anything? A. I asked him to give me a statement of just exactly how his account stood; I judged that he intended to do it, but he never did it.

Mr. McCarter: Just state the facts.

A. There was never anything done from that day to this with regard to it. 20

Q. You did something in connection with it? A. I immediately went to the bookkeeper and asked him to give me his statement of the account, and he did so, and then I immediately—a short time after that—I had a long talk with Harrison, and we decided that, perhaps, the best thing for us to do was to liquidate the affairs of the concern.

Q. Did you hire an expert accountant? A. In October I had an expert accountant to go over the books. I asked Mr. Harrison—I told him I wanted the books audited, and he refused to do it, and I went to the expense of putting an expert accountant at the books, and he made a report to me. 30

Mr. Maxson: I will withdraw this witness at this time and put the expert accountant on the witness stand, and have these overdrafts gone into at this time, for the purpose of establishing our right to an accounting.

Mr. McCarter: I object to his being withdrawn.

Mr. Maxson: The question is, as to whether or not Mr. Harrison kept the books; the counsel says he did not.—I withdraw that.

Mr. McCarter: I think we ought to complete this witness and not interrupt his examination. 40

The Court: I think we should go along with him, and afterwards put your expert on the witness stand to prove the overdrafts. Go ahead with Mr. Fish.

Q. Now, have you had any conferences with Mr. A. Gould Harrison, in which you demanded that he refund these moneys to the corporation? A. No, sir.

Q. Did you have any talk about winding the company up? A. Yes, sir; we talked about liquidating the company at that time. We had a meeting over in Newark. Mr. Henry Harrison was there and Mr. Gould Harrison.

Q. Can you remember the time of the meeting, about? A. I think it was in March, 1910, if I remember right. (Witness looks at a paper that he took out of his pocket.) It was about March, 1910.

Q. Who was there present at that time? A. Mr. Knowles, my attorney; and Mr. Henry Harrison and Mr. Gould Harrison and Mr. Swallow.

Q. What did Mr. A. Gould Harrison say at that time? A. He claimed at that time he had only overdrawn about seven or eight hundred dollars.

Q. And was that in addition to the overdraft which he claimed was crossed off at the first meeting? A. I don't know, sir.

Q. Do you know whether he has ever paid back to the company any of the overdrafts? A. I know nothing whatever about it.

Mr. Maxson: Now, you see, may your Honor please, the only way that I am able to prove these overdrafts is by the books of the corporation; and it seems to me, in view of the fact that I can show that Mr. Harrison was actively connected with the corporation—at the plant all the time—that he is bound by

the entries in the books. Now, it seems to me the surest way of getting at that is to put the expert accountant on the witness stand and produce the corporation books showing these overdrafts.

The Court: The only question is about the procedure in the matter. I will permit you to withdraw him and put the expert on to testify to the books.

Mr. Maxson: Do you want to cross examine him?

Mr. McCarter: Yes.

Cross examination by Mr. McCarter:

Q. Mr. Fish, previous to your coming into the Harrison Milling Company, you were a dealer in grain and flour, etc., in New York City? A. Yes, sir.

Q. And had been for several years? A. Yes, sir.

Q. I judge from the amount of credit that you say you extended to this concern, that you did quite a large business? A. Somewhat of a business.

Q. You had known Mr. Harrison's parents? A. I knew his father very well, indeed.

Q. And you had business relations with him? A. Yes, sir.

Q. And this business, which is the Harrison Milling Company, and a New Jersey corporation, had formerly been conducted by Mr. Gould Harrison's father, hadn't it? A. At the old stand; that was the old stand of his father.

Q. And had you sold the senior Harrison goods? A. No, sir; I was in business with Mr. Harrison——

Q. In New York City, or Chicago, or Montclair? A. Montclair.

Q. In this very enterprise? A. Yes, sir.

Q. Were you a partner of his? A. Yes, sir.

Q. From what year to what year? A. It was 20 years ago; I could not tell you the exact date.

Q. That was how long before the formation of the company? A. I should think, probably, eight or ten years.

Q. Were you at the same time carrying on your regular business in New York? A. Yes, sir.

Q. This was kind of a side issue? A. Yes, sir.

Q. Well that only lasted a year or so, didn't it? A. What?

Q. That association with his father? A. About a year and a half; possibly two years.

Q. And that ceased when? A. That ceased ten or twelve years ago.

Q. After that ceased, you continued your New York business? A. Yes, sir.

Q. Did you sell goods to the enterprise? A. No, sir.

Q. Well, now, Mr. Harrison, Senior, in 1896 or 1897, failed, didn't he? A. I don't remember the date.

Q. You remember the fact that he was unfortunate in business? A. I do; yes, sir.

Q. Did you know the son, A. Gould Harrison? A. Yes, sir.

Q. About how old was he when you were associated out there? A. I think he was about 20 to 21 years old.

Q. Was he in the business then? A. He was bookkeeper for the concern.

Q. And you knew at the time of Mr. Harrison's failure, that Gould, the son, had made some arrangements with his father-in-law, Mr. Mullen, for continuing that business, didn't you? A. No, sir; not at that time.

Q. When did you learn that? A. I don't remember when I learned that.

Q. About when? A. I don't know.

Q. It was before you got your stock? A. Yes, sir.

Q. So that at the time you got your stock, you knew that Gould Harrison, one of the defendants, had a nominal interest in the business, and that the bulk of the stock, other than such as you acquired, was owned by his father-in-law, didn't you? A. I don't know that I did, at that time, until I purchased the stock; I knew at the time I purchased that stock it was not owned by Mr. Mullen at that time; Mr. Mullen was dead when I purchased the stock.

Q. Did you know how this business was being operated by this young man before Mr. Mullen's death? A. No, sir.

Q. You had no curiosity to learn? A. No, sir; none whatever.

Q. Did you solicit to go into the company, or was your co-operation sought? A. My son was the first one that drew my attention to the fact that Mr. Harrison wanted to sell some stock.

Q. Then, your answer to my question is, that you were importuned to go in? A. I would not say "importuned?"

Q. Well, you were asked? A. Yes, sir; I was asked indirectly.

Q. Were you asked to buy stock? A. Yes, sir.

Q. And you made an investment of $4,000? A. Yes, sir.

Q. Right off the reel? A. Yes, sir.

Q. And made no examination whatever? A. No, sir.

Q. Simply poured $4,000 right out? A. Yes, sir.

Q. What year was that? A. 1903.

Q. Did you get your stock? A. Yes, sir.

Q. Did you take interest enough to ascertain how much other stock was outstanding at that time? A. Yes, sir.

Q. Who told you that? A. A. Gould Harrison.

Q. And that was what? A. 40 shares—the equal amount of what I purchased, 80 shares all together.

Q. Par value $100? A. Yes, sir.

Q. Did you go out and look at the books? A. No, sir.

Q. Did you go out and look at the property? A. No, sir.

Q. Did you make any inquiries as to mortgages? A. Yes, sir; I had a statement from Harrison.

Q. Then, you did get a statement? A. Yes, sir; you asked me if I went out and examined the books.

Q. You did see a statement, anyhow? A. Yes, sir.

Q. Before you poured this $4,000 out? A. I poured $2,000 of it out, and took $4,000 worth of stock as collateral for my money.

Q. Then you made a loan first? A. Made a loan for what—I took 40 shares of stock, and advanced him $2,000, subject to receiving a statement from him as to the condition in connection with the business.

Q. You took it as collateral? A. I took the $4,000 in stock, and gave him a check for $2,000.

Q. Now, was that a loan, or was that an investment? A. It was subject to the statement.

Q. You used the word "collateral" awhile ago? A. I figured that the $4,000—40 shares of stock, was a safe investment for me to put up $2,000.

Q. You are a business man? A. Yes, sir.

Q. You know what the word "collateral" means? A. Yes, sir.

Q. How long a time elapsed between the $2,000 advanced and the balance? A. About thirty days.

Q. And meantime, you had seen this statement that was referred to? A. Yes, sir.

Q. Was Mr. Harrison in a hurry for the $2,000? A. I don't think so—no particular hurry.

Q. Well, now, did you get that statement that he rendered? A. Yes, sir.

Q. At that time did it show where the balance of the stock was? A. It showed the number of shares.

Q. And did it show that his wife, Mrs. Harrison, had nineteen of them? A. The statement did not—I learned that from what he told me.

Q. At the same time? A. I don't remember whether it was the same time or not.

Q. You have forgotten whether or not, at the time you advanced the $4,000, Mr. Mullen, the father-in-law, was dead or not? A. He was dead; yes, sir.

Q. Well, at that time you, of course, had entire confidence in Gould? A. I certainly had.

Q. Now, you were living then in New York? A. Yes, sir.

Q. You had this active business in New York? A. Yes, sir.

Q. Very much larger than this enterprise? A. Larger in dollars and cents, not necessarily larger in profit.

Q. You had more of an investment than $4,000 in that other business? A. I don't know that I am obliged to answer you that question.

The Court: You answer the question.

A. I don't know, sir.

Q. You don't know how much you had in that? A. No, sir.

Q. Well, at any rate, what attention, during those early years, from 1903, did you pay to this business? A. I bought all the grain, or at least a

great portion of the grain, that was shipped to the Harrison Milling Company, without making one dollar profit.

Mr. McCarter: I move that the answer be stricken out.

Mr. Maxson: I object.

The Court: Read the question and answer.

(Question and answer read.)

The Court: I think that should stand.

Q. You say you bought—did you buy it for the Harrison Milling Company, or did you sell it from your New York concern? A. I bought it for the Harrison Milling Company.

Q. From where? A. From my New York office—from different parties in the West.

Q. You were able to buy it cheaper than Gould was? A. Most assuredly.

Q. I want to know, then, about what active interest you took in the actual operation of the business at Montclair? A. Nothing whatever, only in the purchasing of the grain.

Q. You immediately became its President? A. Yes, sir.

Q. You immediately became a director? A. Yes, sir.

Q. Who were the other two directors? A. Mr. Harrison and his wife.

Q. Did you attend the meetings? A. Several of them.

Q. What do you mean by "several"—how often did you meet? A. I guess we would go, sometimes, two years; the date of the minutes will tell you how often we went.

Q. Sometimes you would go two years without any? A. Yes, sir.

Q. It was not run exactly as a corporation? A. I should say not.

Q. You realized that Mrs. Harrison was a lady, that you were in New York, and Gould was running the business; was that your thought? A. Yes, sir.

Q. Now and then you would go out and have dinner and have formal meetings? A. I was there three times in five years, I think.

Q. In the meantime, you were drawing a salary of $25 a week? A. Yes, sir.

Q. For what services was that salary? A. It was voted to me when I voted Mr. Harrison $40 a week.

Q. Now, that was when? A. In November, 1905, I think; it was to take effect in August; the salary account was to take effect August 1st, 1905.

Q. That continued down until 1909, didn't it? A. Yes, sir.

Q. Is this the resolution to which you refer—minute book, page 29, "Exhibit C 1": "Montclair, N. J., November 18, 1905; at a special meeting of the directors called by the Pres., all being present, A. G. Harrison acting as Chairman, on motion of E. L. Harrison, a resolution was passed that a dividend of five per cent. be declared on the eighty shares of stock; on motion of E. L. Harrison, a resolution was passed that the compensation of the President be fixed for the year August 1, 1905, to August 1, 1906, at the rate of $1200 per year, to be paid monthly"; was that the resolution that you refer to? A. I don't think there was any stated time given as to how long that salary should be drawn.

Q. It was on that occasion that the resolution giving you a salary was passed? A. Yes, sir.

Q. Was there any other resolution ever passed with regard to your salary that you can speak of,

except the one that increased it to $250 a month? A. Only at a meeting between Mr. Harrison and myself in September; I think it was in September, 1909; we agreed that I should come out to Montclair, and we should each draw $250 a month.

Q. Pay attention to my question; I asked you if there was any other resolution ever passed with regard to your salary except the $250 resolution? A. No, sir.

Q. Now, this resolution which I just read to you, fixing your salary at $1200 a year for one year, seems to have been passed the same day that the following resolution was passed, on your motion: "WHEREAS, payments to the amount of 4,552 63/100 dollars, as more fully appears from an open a/c in the name of A. Gould Harrison, have been made by the directors of the Harrison Milling Company to the said A. Gould Harrison as and for compensation for special work and services as manager of the said Co.; and WHEREAS, these payments have been made at the rate of 760 dollars per year since the incorporation of the said Co., in accordance with a contract with said directors: THEREFORE, BE IT RESOLVED, that such payments made as above, be ratified and confirmed and charged to the general salary a/c of the Harrison Milling Company, and that the salary of the said A. Gould Harrison be at the rate of 40 dollars per week from December 1st, 1905, to August 1, 1906;" do you remember that resolution? A. I remember a portion of that resolution.

Mr. Maxson: I object to counsel reading these resolutions into the record. One of the principal contentions in this case, and one of the questions on which I think it will turn, will be the manner in which this minute book

has been taken care of; the manner in which these entries have been made. We say these minutes were not entered at the time. It seems to me, that under the circumstances, it is improper that these resolutions be read from this book, which is not in evidence and which may be introduced, if the Court desires to accept it later on, into the record, and I object.

The Court: I shall allow that to be read. I understand he was present at this meeting.

Q. Now, that your attention is recalled to the occasion when you were voted a salary of $25 a week, and Gould Harrison was voted an increase in salary, and also was authorized to write off what you call an overdraft, I will ask you if you also recall the fact that at that time he stated that from the very inception of this business, while his salary had been only $20 a week, it had been agreed by Mr. Mullen and the directors of the company, that he should make a living out of it, and that, proceeding on that basis, he had—from the very beginning—drawn, as the books would indicate, more than his nominal salary of $20 a week, or words to that effect? A. I remember his saying something similar to that.

Q. And I suppose it was largly upon your belief in the authenticity and fairness of that proposition that you voted for the resolution to remit an overdraft—if you call it such—of between $4500 and $4600? A. I figured that, inasmuch as he was only getting $20 a week, that that was not reasonable.

Q. I understood you to say, that from that time you never saw the minute book until 1909? A. I am sure of it.

Q. Had you ever seen it before? A. Never.

Q. And it was in October or November of that

year? A. Yes, sir; between the latter part of October and the forepart of November.

Q. How do you fix that? A. I fix it from the fact that I ordered the books of the Harrison Milling Company to be placed in charge of the bank, as I had made up my mind at that time that there was trouble brewing.

Q. What bank? A. The Bank of Montclair.

Q. And having reached that determination, what occurred to fix it in your mind? A. November 19th, I think it was—simply because I had seen those minutes then, and that opened my eyes.

Q. I ask you again what there was about determining to put the books in that bank, that enables you to fix that as the time when you first saw the minute book? A. Because I know that was just about the time our trouble commenced, and that is the reason I went to the minute book to ascertain regarding the bookkeeper's statement not agreeing with Harrison's.

Q. Where was it you first saw it? A. There, in the office.

Q. You never had any curiosity to see the minute book before? A. No, sir.

Q. And how do you make it November? A. I make it November because—well, perhaps, I should change that, if I may—from the time that I first went to Montclair, which was in the latter part of September—it was after that that I first saw the minute book; now, I cannot tell exactly the date.

Q. Now, Mr. Fish, you stated very positively on direct examination, that previous to November 19, 1909, you had never seen that minute book; you have already told us it was in connection with some bank matter; now, when did you first see this minute book? A. As I say, there is a possibility I may

have seen that minute book previous to that; I would not swear to it.

Q. How long previous? A. From the time that I got to Montclair in the latter part of September, 1909——

Q. Did you know there was a minute book? A. I never saw one; I could not swear there was a minute book, only on faith——

Q. You saw resolutions written out—memoranda taken? A. No, sir; I never saw a resolution written out.

Q. And you never had the memorandum book home with you? A. No, sir; not unless it was after I went to Montclair.

Q. You never had the minute book home with you? A. I would not swear to that.

Q. You did swear to it just now? A. I don't think that question was asked me before.

Q. I have already asked you twice; did you ever have the memoranda book home with you? A. Not to my memory, and yet I may have.

Q. When was that? A. It was sometime after the latter part of September.

Q. Now, I show you resolution dated September 30, 1909, in this minute book, and ask you if that is not in your own handwriting? A. It is; yes, sir.

Q. Then it must be before November that you saw this minute book? A. Yes, sir.

Q. So that on the 30th of September, you did, in your own handwriting, write the minute that there appears on page 30, didn't you? A. Yes, sir; that is my own handwriting; that minute was entered there a long while after September 30th; it was dated September 30th, but the minute was not entered in that book until a long while after that.

Q. How long after that? A. In April sometime.

Q. 1910? A. Yes, sir.

Q. Did you yourself, antedate the resolution? A. Yes, sir.

Q. How did you come to do that? A. To date it back about the time that the salary was voted for each of us—the $3,000 apiece.

Q. I will read the resolution: "Montclair, N. J., Sep. 30th, 1909. At a meeting of the Board of Directors the following business was transacted; the salary of the President and Treasurer be Three thousand each for the ensuing year, commencing Oct. 1st. Meeting held at the main office, 25 Grove Street. (Signed) A. Gould Harrison, F. K. Fish." Now, that is your own signature? A. Yes, sir.

Q. And the body of that resolution is in your own handwriting? A. Yes, sir.

Q. Is that Mr. Gould Harrison's signature? A. It is; yes, sir.

Q. Was Mrs. Harrison present at that meeting? A. No, sir.

Q. You and he held a meeting at the main office? A. Yes, sir.

Q. And you agreed that each of you should have a salary of $3,000? A. Yes, sir.

Q. How much were you getting before that resolution was passed? A. He was getting $40 a week, and I was getting $100 a month.

Q. So that you and he agreed to raise your salaries from $100 a month and $40 a week, up to $3,000 a year? A. Yes, sir.

Q. And then, you say, you antedated the resolution? A. Yes, sir.

Q. When was the resolution, in fact, passed? A. In September some time.

Q. In September? A. Yes sir.

Q. 1909? A. The early part of September, 1909.

Q. Why did you date it as September 30th? A. I think the salary was to take effect from that date, from September 30th, I think so.

Q. What year? A. 1909—that minute was put there along about the first of March.

Q. Was there any written on the next page at the time you wrote that in there? A. I don't remember.

Q. Cannot you recall? A. I can, if I saw what was on the next page.

Q. Was the minute on September 8th, immediately preceding it, in there at the time? A. Yes, sir.

Q. You saw that done? A. Yes, sir.

Q. Did you see anything else in there at that time? A. Yes, sir.

Q. You read considerable of this minute book at that time? A. Yes, sir.

Q. And how is it that you read the resolution on page 29, and you did not read the resolution on page 28? Page 28 is the resolution that writes off between $4500 and $4600 of alleged overdraft? A. I knew I had written that in.

Q. And you took no interest in that? A. No, sir.

Q. You said you were not present at this meeting, September 2d, 1907? A. I did not say so.

Q. Have you any recollection of being there? A. I have a recollection of being at a meeting.

Q. Do you recollect that resolution being passed? A. No, sir.

Q. Now, at about the time that you wrote the resolution dated September 30th, appearing on page 30 of the minute book, you observed on the preceding page a minute of a meeting purporting to have been held on September 2d, 1907, at which you are stated to be present, and at which place it is said that $386.74 was directed to be charged off of

Gould Harrison's account, and you never called Gould Harrison's attention to it? A. I did not.

Q. Gould Harrison's name is attached to the resolution as Secretary of the meeting. A. I see that.

Q. Why didn't you call his attention to it? A. I supposed that that was a minute referring to 19 shares of stock that A. Gould Harrison had bought at 120, and I had agreed to rebate him the $20 a share—that is, to charge it off—he paid $380 above par for the stock, and I supposed that this had reference to that, and that the difference of $6.74 was probably incidental expenses in connection with it.

Q. Now, Mr. Fish, I will read this resolution, and I ask you what there was in that resolution that led you to the conclusion you have just reached: "Montclair, N. J., Sept. 2, '07. At the meeting of the directors, the following officers were re-elected for the ensuing year: F. K. Fish, Pres.; E. L. Harrison, Vice-Pres.; A. G. Harrison." A. Mrs. Harrison's name is not signed here.

Q. Will you kindly keep still when I am reading the resolution? (Continues reading the resolution) "A. G. Harrison, Treas. and Mgr.; N. S. Coleman, Sec'ty;" "with same authority as before, a resolution was, on motion of Mr. F. K. Fish, passed, that the overdraft of A. Gould Harrison, amounting to $386.84 be charged off, giving his a/c credit for same; meeting adjourned without date." Now, I ask you what there was in that resolution that leads you, or led you at that time, to conclude that that had regard to a purchase of stock? A. Simply because it was just about the amount of money that would have been the difference. I knew there had been no such meeting as that; I had never made any motion of that kind.

Q. At any rate, you made no objection or protest or statement? A. No, sir; I did not.

Q. Did you observe the minute immediately on top of the minute I have just read: "At the adjourned meeting of the stockholders the following were present: F. K. Fish and A. Gould Harrison. The minutes were read and approved; there being no further business, the meeting adjourned." A. I don't remember that at all.

Q. And you never turned your eyes to the left, to page 28 at all? A. No, sir; I did not.

Q. Did you read the minute of September 8, 1908, on top of page 30? A. That meeting never took place.

Q. Well, the meeting of September 8, 1908, the minute of which appears on top of page 30, over and above the minute in your own handwriting, you say never took place? A. That has been filled in since that was put there.

Q. Then, why did you write your minute at the bottom of the page? A. That portion of it was there—of the minute.

Q. Why did you write your minute at the bottom of the page, if there was no minute of a previous meeting above it? A. Only a portion of that minute was in there—on page 30.

Q. Then, there was some of the minute of September 8th there, wasn't there? A. There was something, yes, sir; but I don't remember what.

Q. Now, do you say that the meeting alleged to have occurred September 8th never occurred? A. I say that.

Q. Did you call Mr. Gould Harrison's attention to the fact that on page 30, as well as on page 29, were minutes of meetings that never had, in fact, occurred? A. I told him I never was at that meet-

ing, I told him that later on, but not at the time that I first looked at it.

Q. So that, notwithstanding the fact that at some unknown time you wrote, in your own handwriting, on page 30, in the middle of the page, a resolution, at which time you observed the resolutions appearing on page 29 and at least a portion of the resolution appearing at the top of page 30, both of which you say never occurred, yet you did not direct Mr. Gould Harrison's attention to either? A. I did not.

Q. Why didn't you? A. I had made up my mind; I knew that I was not at that meeting, and I knew that we were going to get into trouble, and I considered it policy to say nothing.

Q. You say you knew you were going to get into trouble? A. I suspected, when he told me he had overdrawn $8,000.

Q. The resolution on page 30, I will read into the record: "Montclair, N. J., Sept. 8th, 1908. At the meeting of the Board of Directors the following officers were re-elected for the ensuing year. F. K. Fish, Prest., E. L. Harrison, Vice-Prest., A. Gould Harrison, Treas. and Mgr., with same authority as before; on motion, A. Gould Harrison was elected Sec'y of the Co. in place of N. S. Coleman, deceased. A resolution by Mr. Fish was passed that the overdraft of A. Gould Harrison, amounting to
be charged off to salary acct. Meeting adjourned without date. (Signed) A. Gould Harrison, Sec'y, approved 9/8/08." Now, when was it that you did speak to Mr. A. Gould Harrison concerning the resolution dated September 8th, which I have just read, providing for the remission of the overdraft the second time? A. At a meeting held along about February; I called a meeting, and it was then that I told Mr. Harrison.

Q. What year? A. 1909.

Q. So it was not until February or March, 1910, that you spoke of this thing? A. That is right.

Q. Now, Mr. Fish, you recall the fact, don't you, that Mr. Coleman died? A. He has been dead some time.

Q. You recall the fact that he died? A. Yes, sir.

Q. Someone had to be elected in Mr. Coleman's place? A. Mr. Coleman did not hold any office.

Q. Are you sure of that? A. Not to my memory.

Q. Look at the minutes on page 29, is that signed by "N. S. Coleman, Secretary?" A. Yes, sir.

Q. Look at the minutes of September 2d, 1907, on page 29, at the bottom of the page; is not that signed the same way? A. Yes, sir; but I don't think he was Secretary.

By the Court:

Q. As I understand, you were present at both meetings where the salary increases were made? A. Yes, sir.

Further cross:

Q. While you were not paying very much attention to the Company's business at this time, I mean during the years 1907 and 1908, you did pay attention enough to attend an annual meeting when the officers were elected, didn't you? A. I attended a meeting in October, the first meeting, when I was elected President.

Q. October of what year? A. 1903.

Q. Didn't you attend any meetings at all? A. Those meetings are in the minute book.

Q. And didn't you generally attend the annual meeting when the officers were elected? A. We did not have annual meetings.

Q. You knew the officers were elected for the year? A. Yes, sir.

Q. And you knew they were annually elected? A. I did not know anything about it.

Q. Did you think you had never been elected President of this institution but once? A. That is true.

Q. You never were elected President but once? A. That is true.

Q. Now, do you recall being out there at a meeting in 1908, when Mrs. Harrison was present, and the house was being papered, at No. 7 Vincent Place, where the Harrisons then lived, and the meeting was, I think, in the early part of October, 1908? A. I don't remember.

Q. Taking dinner with Mr. and Mrs. Harrison, and, perhaps, having Mrs. Fish with you? A. I remember that very well; I don't remember the date; my wife was with me.

Q. You were all friendly? A. Yes, sir.

Q. Socially pleasant and agreeable? A. Yes, sir.

Q. And a meeting was held? A. No, sir; no meeting was held.

Q. Purely a social call? A. Yes, sir.

Q. Didn't you go out to have a meeting? A. No, sir.

Q. Do you remember on that occasion, after dinner, leaving Mrs. Fish with Mrs. Harrison at the house, and going down to the factory and looking over the books with A. Gould Harrison? A. I remember going down there.

Q. Now, that meeting is impressed on your mind, whenever it was? A. There was no meeting.

Q. I mean that occasion? A. Yes, sir; I remember the occasion very well.

Q. You went over Gould's accounts that night? A. No, sir.

Q. What books did you go over? A. We did not go over any books.

Q. You went down to the factory? A. Yes, sir.

Q. Just to have a talk? A. Yes, sir.

Q. You could not talk up at home? A. We did not.

Q. How far is the factory away? A. Half a mile, I suppose.

Q. Did you walk down? A. I don't know.

Q. How long were you there? A. Two hours.

Q. And you never looked at a book? A. No, sir; not as far as examining into any accounts that A. Gould Harrison was concerned in.

Q. Did you look at any accounts? A. Yes, sir; accounts where he sold certain parties, and he claimed he had to give the coachman so much money. We were agitating the question whether it was worth while; that was all that was done at that gathering.

Q. Now, do you recall the fact that on this occasion, whenever it was, when you and Mrs. Fish were out there at No. 7 Vincent Place, that you and A. Gould Harrison had a talk in the front room at which the ladies were not present, and that Mrs. Harrison was subsequently called in, and that A. Gould Harrison presented a slip and called attention to the fact that he had had a further overdraft, as it was called, and the matter formed the subject of talk and comment at that time? A. I certainly do not.

Q. Do you say it did not occur? A. I know it did not occur?

Q. And then, after that conversation, you then went down to the office, looked up the accounts, and saw his accounts? A. No, sir; I know nothing whatever about his account.

Q. Now, we are going to the meeting in March, 1910, which I think occurred in Mr. Harrison's office? A. Yes, sir.

Q. Your counsel was present? A. Yes, sir.

Q. And somebody else in your interest, besides yourself? A. Yes, sir.

Q. You, in the meantime, had made a demand that you be given equal representation on the Board of Directors? A. Never until that night at that meeting.

Q. Do you mean the meeting of March? A. Yes, sir.

Q. At which Mr. Henry Harrison and your counsel were there present? A. Yes, sir.

Q. That was the first time you ever made the demand? A. Yes, sir.

Q. You had had the idea in mind before that meeting? A. I had not.

Q. It never occurred to you until that meeting? A. No, sir.

Q. And was this a meeting designed to avert the trouble that you said you suspected was coming? A. It was done to ascertain what really was the best thing to do.

Q. Designed in the line of peace? A. Not necessarily peace—in the line of liquidation.

Q. You said that way back in September, 1908, you smelled trouble coming? A. I never said that.

Q. Had the trouble come in March, 1910, which you suspected was coming? A. Yes, sir.

Q. When had it broken out? A. When he told me he had overdrawn his account Five or ten thousand dollars; that is what started the trouble.

Q. And that was when? A. That was along the latter part of November, or the forepart of November of 1909.

Q. Now had this discovery of yours in regard to the so-called second overdraft, preceded the entry of your own minute?

Mr. Maxson: Which overdraft do you refer to as the second overdraft.

Q. The other overdrafts, and the one that you had forgiven by the resolution of November 18, 1905—now, I ask you if your own resolution, in your own handwriting, to which I call your attention— A. Which resolution is that, when you say my "own handwriting?"

Q. Have you got more than one in this book in your own handwriting? A. Possibly I have. (Witness looks the book over.)

Q. Now, I ask you if your discovery of the overdraft or drafts, subsequent to the one which had been forgiven by the resolution of November 18, 1905, preceded the entry of the resolution on page 30, in your own handwriting? A. That entry of the resolution never was entered in that book at that date.

Q. I ask you if your discovery preceded or followed the entry of that resolution, whenever it was entered? A. Yes, sir; I noted that before.

Q. It preceded it? A. Yes, sir.

Q. So that, if you discovered it in March, it was after March that the entry in your own handwriting at page 30 was made? A. I discovered that along in October or November of 1909.

Q. Do you recall directing the entry of the resolution that appears at the top of page 31, providing for the way that checks should be signed? A. There was never any meeting regarding that; it was only an understanding between him and myself.

Q. (Question read.) A. Yes, sir.

Q. That was directed to be entered when—about the time it bears date? A. It should have been—about that date that is there.

Q. And your idea was, from that time on, all checks and notes must be signed by both President and Treasurer? A. Yes, sir.

Q. Do you remember when you signed your signature there to that resolution? A. No, sir; I don't remember.

Q. About the time it was entered, do you suppose? A. No, sir; I don't think so.

Q. How soon? A. If my memory serves me, it was about the time that that was entered on the previous page in my own handwriting; and that was entered along in February or March.

Q. Now, coming to this meeting in Mr. Harrison's office, was that in the daytime or evening? A. In the evening.

Q. You required a note or notes for your arrears of salary, didn't you? A. I did.

Q. Did you get them? A. I did.

Q. Were they paid? A. Yes, sir.

Q. What else did you ask for? A. One thing I asked for was, than an audit of the books be made at the company's expense, and that was refused, but I was permitted to have an audit at my own expense.

Q. You testified on direct examination, that they refused to permit an audit; there was no refusal at all, permitting you to have an audit at your own expense? A. That is it.

Q. What else occurred? A. We talked over as to the propriety of selecting three men to represent us at the mill there in winding up the concern; if we could select three men that were satisfactory to each at that time, we thought we could liquidate

the business, but later on we found we could not hit on men satisfactory to both, so the thing has been running ever since.

Q. Well, business was profitable, wasn't it? A. From the statements that I received from A. Gould Harrison, I should call them so.

By the Court:

Q. Is this business still operating? A. Yes, sir.

Further cross:

Q. At what stage of the interview that day was the suggestion of liquidation made, early or late? 20 A. Harrison and I had talked over the question of liquidation several days before at the mill.

Q. Have you told us all that occurred? A. All that I remember; all with the exception of the fact that it was at that meeting that the question of the overdraft came up.

Q. Did you make an offer of settlement at that time? A. No, sir.

Q. Didn't you say at that time, if they would pay you $1,000 you would be satisfied? A. No, sir.

Q. And didn't you definitely say: "I want equal 30 representation on the board, and if I don't have that there will be trouble;" or that you would liquidate? A. I don't know that I used the word "liquidate;" possibly I may have done so.

Q. And you filed your bill shortly thereafter? A. Yes, sir.

Q. Now, why didn't you file your bill before; this was in 1910, wasn't it? A. Yes, sir.

Q. You claim you discovered this third overdraft, so called—the trouble had occurred—now, I ask you why—— 40

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Mr. Maxson: Objected to as immaterial, because the Court has held in this very case that we are not guilty of laches.

The Court: It may be directed for another purpose. Answer the question.

A. It was put into the hands of my lawyer along in February of 1910.

Q. And this meeting occurred in March? A. Yes, sir.

Q. With Mr. Harrison's counsel? A. Yes, sir.

Q. Then it was that you suggested your demand for equal representation on the board? A. Yes, sir.

Q. And you directed your counsel to assert that in the bill? A. I don't know.

Q. Have you read the bill? A. Yes, sir, but I don't remember whether it is there or not.

Q. Did you ever read the bill? A. Yes, sir, I have read the bill.

Q. Do you recall that in the bill? A. (No answer.)

By the Court:

Q. Is there any charge of insolvency in the bill?

Mr. McCarter: This is the amended bill.

Mr. Maxson: I am on the amended bill.

The Court: I understand that.

Mr. Maxson: There is no direct allegation that the company is insolvent.

Further Cross:

Q. Now, during the year from September, 1909, until September, 1910, was it that you lived at Montclair? A. Yes sir.

Q. And I understood you to say earlier in your examination that it was possible and even probable

that on some occasions during that period you had the minute book at home? A. Possibly.

Q. Don't you now recall the fact that you did? A. No sir, I do not.

Q. You had some of the other books, didn't you? A. I had the stock book there.

Q. You knew who the stockholders were? A. I did, at that time.

Q. What did you want with the stock book? A. My lawyer wanted me to get the names of the stockholders.

Q. It was after you had employed counsel in the matter? A. Yes, sir.

Q. That was after February, 1910? A. I think so, yes, sir.

Q. Was it before or after the meeting down at Mr. Harrison's office? A. Before.

Q. And how long did you have the books, whichever they were? A. Over night, the stock book; I took it out of the safe.

Q. At that time were you accustomed to going to the office every day? A. Yes, sir.

Q. And your own desk was in the place where the books were? A. Yes, sir.

Q. Did you ever look at the books during the year you were in the office? A. What books?

Q. Any of the books? A. No, sir, nothing only the sales book.

Q. Were you there all day? A. No, sir.

Q. A portion of the day each day? A. Not always there each day; I was ailing at that time, and I did not get down every day.

Q. But you were there three or four times a week for several hours a day? A. Yes, sir.

Q. Now, the bookkeeper at that time was who? A. The same bookkeeper that I have now, Mr. Tichenor.

Q. Do you mean to tell me that you never, during that year that you were spending hours a day in the company's office—do you mean to tell me that you never looked at the books? A. That is what I say—I never looked at the books.

Q. They were at your convenience, if you wanted to? A. Yes, sir.

Q. Nobody objected to your looking at them? A. No, sir; if I had been a bookkeeper, I would not have taken the expert accountant there.

By the Court:

Q. Have you resigned as president? A. I was politely kicked out; a new president was elected after the filing of the bill.

Further cross:

Q. Do you mean to say that you never knew of the existence of this Harrison account in these books? A. That is what I say.

Q. You were bookkeeper enough to understand that? A. I understand nothing about books.

The Court: Are these the account books of the corporation?

Mr. McCarter: Yes, sir; we have them all here.

Q. Are you bookkeeper enough to understand that here is an account on page 46 of this ledger,—A. Gould Harrison, showing charges to him, commencing as early as 1903, in January, carried forward on page 47—from January 1st—carried forward to page 68, with some credits on the other side—are you bookkeeper enough to understand that, if you looked at it? A. Yes, sir.

Q. Do you say you never saw that account? A. I say so.

Q. Do you say you never knew it existed? A. I knew nothing about it.

Q. You never knew there was such an account as that? A. I did not.

Q. You never had any statement made out by the bookkeeper, of that very account? A. Only the statement that I asked when Mr. Harrison told me he had overdrawn his account; then I asked for a statement from the bookkeeper.

Q. And you got it? A. Yes, sir.

Q. And that was when? A. That was along in November.

Q. What year? A. 1909.

Redirect examination by Mr. Maxson:

Q. Your attention has been directed on the cross-examination to some statements which you received from the Harrison Milling Company; is that the first statement you received? A. Yes, sir.

Q. It is? A. Yes, sir.

Mr. Maxson: I offer it in evidence.

Marked "Exhibit C 2."

By the Court:

Q. That is the statement upon which you bought the stock? A. Yes, sir. (Witness examining it.)

Mr. Maxson: It is admitted that this is in A. Gould Harrison's handwriting?

Mr. McCarter: Yes.

Mr. Maxson: I offer it in evidence.

Marked "Exhibit C 2."

Further redirect:

Q. I show you another statement, and ask you where you first saw that?

Frederick K. Fish—By Complainant—Redirect

The Court: What is the date of that statement?

Mr. Maxson: July 1, 1903. (Speaking of Exhibit C 2.")

A. This was sent to me through the mail.

Q. Do you know in whose handwriting that statement is? A. No, sir, I do not; Harrison would know.

Mr. Maxson: Will you admit that this came from the company?

Mr. McCarter: There seems to be some question about whose handwriting that is, so you will have to prove it.

Q. Now, in addition to the two statements shown you, one of which has been received in evidence and marked "Exhibit C 2," and the other dated August 1, 1903, on the letterheading of the Harrison Milling Company, did you ever receive any other statement from the company during that year? A. No, sir.

Q. Now, how frequently thereafter did you receive statements? A. Every year.

By the Court:

Q. Every year from the time you bought your stock? A. Yes, sir.

Q. Was it mailed to you? A. Yes, sir.

Further redirect:

Q. And did you personally ever make an examination of the books of the company? A. No, sir, never.

Q. Subsequent to the time when a resolution was passed crossing off an overdraft of between $4,500 and $4,600, on November 18, 1905, were you ever

present at a meeting where a resolution was offered to cross off any overdraft whatsoever of A. Gould Harrison? A. Never.

Q. Did you ever offer any resolution to cross off any overdrafts of his? A. Only this $4,500.

Q. I mean after this time? A. No, sir, never.

Q. This resolution to which your attention was directed on your cross-examination, on page 30, which purported to have been passed September 8, 1908—purports to have been passed—it has no amount in it—now, did you, at that time, offer a resolution to cross off any amount of overdraft for A. Gould Harrison? A. I never was at that meeting at all.

Q. Where were you on September 8, 1908? A. Up in Summit, New York State; I left New York on the 15th of June, and never came back until the 29th of September.

Q. And did you come to New York or New Jersey at any time between the time you left on the 28th of September, 1908? A. No, sir, never.

Q. This minute entered in the book in your handwriting, dated September 30, 1909, was that entry made after the time when Mr. A. Gould Harrison told you that he had overdrawn? A. Yes, sir.

Q. And at the time you entered that, did you say you saw the minutes of it, or after? A. I saw that minute above it.

Q. When, if you recall, was this resolution passed, which is dated here September 30, 1909, in reference to the $3,000 salaries? A. There really never was a meeting regarding that; it was simply an understanding between Mr. Harrison and myself that we were each to draw $250 a month.

Q. Then, there was no meeting held? A. No, sir.

Q. Now, did Mr. Harrison come to you at any time and say anything about having an opportunity to buy some stock of the Harrison Milling Company? A. Yes, sir.

Q. When was that?

Mr. McCarter: I object; that certainly is not redirect examination.

Mr. Maxson: Counsel brought out from this witness the fact that he had thought that an amount of four thousand and some dollars was part of the transaction wherein he agreed with Mr. Harrison, that he might pay a surplus for some stock—part of the examination.

Mr. McCarter: On page 29 appears a minute, which your Honor will recall the witness said he saw, and he had not called Mr. A. Gould Harrison's attention to it, although he said there never had been any resolution passed forgiving an overdraft. This resolution on page 29, reads as follows: "Overdraft of A. Gould Harrison, amounting to $386.74, be charged off, giving his account credit for the same." I asked him why he did not call Mr. Harrison's attention to it, and he then undertook to say something or other about some stock. Now, I did not open up the question of what the stock was; he gave that as an explanation of his failure to call Mr. Harrison's attention to this thing. Now, it is a question of argument how far that is an excuse, but I don't know that it opens up about a stock transaction. He says he supposes that has something to do with the stock, and I understand counsel now proposes to open up what this stock transaction was.

The Court: I shall allow the question.

Q. (Question read). A. It was several years ago, four or five years ago, I think.

Q. What did you say to him and what did he say to you at the time? A. I told him I thought it was to his interest to secure that stock when he was in the position to do so.

Q. What else, if anything? A. I don't remember of anything else.

Q. Was anything said about the surplus above par? A. No, sir.

Q. Did you see him again about it? A. I think I spoke to him again about it, if I remember right, maybe a year after that; then the same conversation took place as I mentioned before; I advised him to buy the stock as soon as he was in a position to do so.

Q. Did you never have any conversation with him about the premium on the stock? A. Not until after the stock was bought; after the stock was bought he told me that he had given $120 for it, and there were 19 shares, and that would be $380, and I told him I was perfectly willing that, inasmuch as he had to pay a premium for that stock, to let the $380 go into the expense account.

Q. Now, was anything ever said about paying for that stock out of the treasury of the Harrison Milling Company? A. No, sir.

Q. When did you first know that the stock was paid for by the Harrison Milling Company? A. When I received the report of the expert accountant.

Mr. McCarter: This is all new matter.

The Court: This, of course, is opening up a new line.

Mr. Maxson: That is all for the present.

Mr. McCarter: I do not think I have ever heard of such a procedure as this; counsel says "That is all for the present." Now, we want

this witness examined completely, and end up his examination. He has opened now a brand new subject that has nothing to do with the subject referred to, and now he has to close with this witness.

The Court: The primary question involved in this cause is, the right to an accounting.

Mr. Maxson: Your Honor has given me permission to recall this witness, and I only asked those questions because I considered they were part of the redirect examination. I thought your Honor so ruled.

The Court: You want to cease and allow cross examination at this point?

Mr. Maxson: Yes, sir; then I want to put the expert on the witness stand.

Mr. McCarter: We have no desire to keep anything back, but I think that the orderly course of procedure and the legitimate way to try a case is to finish with a witness before you get through with him. Now, if counsel has no more questions to put to Mr. Fish bearing upon his main case——

The Court: There was an understanding between the Court and counsel, that he could withdraw his witness at that time, so that he could get in the question of the overdraft from the expert, the idea being to expedite the trial of the cause.

Mr. McCarter: We object to trying this case by piecemeal.

The Court: I think it would be wise for counsel for complainant to proceed and question him as far as he wants to on the question of this treasury stock, and conclude it. Now, it is understood, when you get through with your expert, that you have a right to recall this man on other subjects.

Recross examination by Mr. McCarter:

Q. Now, Mr. Fish, I understand you to now say, that notwithstanding the fact, that at whatever time it was you wrote the resolution in your own hand on page 30, you saw the resolution above it? A. Yes, sir.

Q. You saw the resolution on page 29? A. Yes, sir.

Q. You did not speak to Mr. Harrison about those resolutions, although they purported to express the occurrences of two meetings at which overdrafts were sanctioned, and you deliberately voted for an increase in his salary? A. I said I spoke to Mr. Harrison later on.

Q. I mean, you did not speak to Mr. Harrison before the meeting occurred at which you increased the salaries? A. That is right.

Q. Now, there is no misunderstanding about that? A. No, sir.

Q. So you voted to increase his salary after you had observed those two fake meetings, and you never spoke to him at the time about the two fake meetings, did you? A. The increase of salary was given to him before I looked at these minutes at all.

Q. Now, as I understand it, four or five years ago Mr. Harrison came to you and said that his sister-in-law, or some other person, had inherited a part of Mr. Mullen's stock, and that he had an opportunity to purchase it, and you recommended him to get it? A. He simply said that they had some stock for sale.

Q. You knew they had it, I suppose? A. He said so.

Q. Is that the first information you had in regard to that stock? A. I probably did know that

this young man—yes, sir, I did know; I knew I had met one of them—I had met the gentleman.

Q. You knew that Mr. Mullen, at the time of his death, owned this stock, except a share or two that A. Gould Harrison and his wife had, and that at his death, which had occurred in the meantime, Mrs. Harrison took part and the other sister took another part? A. I will admit it.

Q. And it was that stock that he wanted to buy? A. I knew they had the stock.

Q. It was that stock that you suggested he should buy? A. Yes, sir.

Q. And when he came and told you that he had to pay more than par, you said, "All right, charge the excess above par to the company? A. No, sir, I did not.

Q. When he came and told you he had to pay more than par? A. After he had said he had bought the stock and it cost him $120.00, I told him I would be perfectly satisfied to have him charge the $20.00 a share off to the expense account.

Q. In other words, that the company should stand for the $380.00? A. Yes, sir.

Q. But you did not ever authorize the company to pay for the par value of the stock? A. No, sir.

Q. Now, don't you know the company did not pay for the par of the stock? A. I know the company did pay for the stock.

Q. How do you know that? A. Because of the company's checks.

Q. Have you got them here? A. Yes, sir.

Q. What knowledge have you got that the company paid for it?

Mr. Maxson: He has answered that question; he said we have the checks.

Q. Where are the checks?

Mr. Maxson: I have them here.

Mr. McCarter: I ask for their production.

Mr. Maxson: There are all the checks that we have; you are perfectly welcome to put them in evidence if you see fit; I was going to put them in evidence.

The Court: Are those the checks relating to the stock transaction?

Mr. Maxson: Two of them are the checks which paid for the stock; I understood that that fact was admitted.

Q. Where did you get these checks? A. I got them out of the Harrison Milling Company's office.

Q. Who took them? A. The accountant.

Q. Did you tell him to take them? A. I did not know anything about them until he told me that he had them.

Q. So that your accountant went to the office of the company to examine some checks, and he examined the books and took away a lot of checks, did he? A. As President of the company, I had a right to those checks; presumably, I may have told him to get them; I would not swear whether I did or not.

Q. As a matter of fact, did the accountant take those checks that he saw at the office of the company, with or without your sanction? A. I don't remember.

Q. You cannot tell? A. No, sir.

Q. Didn't you tell us a moment ago, that the first you knew he had them was when he told you he had them? A. Yes, sir, but I may have told him that anything that he saw that was anything to my interest, just to take them.

Q. Did you ever see this check which I show

you, dated September 18, 1906, to the order of the Harrison Milling Company, signed A. Gould Harrison, for $2,000? A. I don't remember.

Q. And did you ever hear of that check of Mr. Harrison—and did Mr. Harrison tell you, that before he bought that stock from his sister-in-law, Mrs. Beyea, that he had sold a house and lot to his brother Henry, and had put the money in the treasury of the company and deposited a check to the credit of the company for $2,000? A. No, sir, he never told me anything like that.

Q. Did you ever hear that story before? A. Yes, sir. I heard that he made an assertion at that time to Mr. Nasmyth—my accountant.

Q. And he made the assertion that he had deposited such a check? A. I don't know anything about that check at all.

Q. Did he make the assertion? A. I don't know.

Q. Mr. Nasmyth reported this to you? A. He said that Mr. Harrison had said that he had loaned the company some money.

By the Court:

Q. Did Mr. Nasmyth, your expert accountant, make a report to you about this? A. Oh, yes,—about that check I know nothing at all.

Q. Did Mr. Nasmyth report the fact that Mr. Harrison had loaned the company $2,000? A. Yes, sir, Mr. Nasmyth reported that to me, that he said he had.

Q. Did the expert accountant report that he found that the loan had been made? A. He said that Mr. Harrison had told him that.

Q. Did Mr. Nasmyth make a detailed report?

Mr. Maxson: Yes, sir.

Q. Did Mr. Nasmyth make a written report? A. Yes, sir.

Further recross:

Q. You say you were at Summit, New York, spending a holiday? A. Yes, sir.

Q. Do you recall the fact that it was after your return from Summit, New York, that you and your wife went out and spent the evening at Mr. Harrison's residence, to which you referred earlier in the day? A. I think that is the meeting that you had reference to, that I was there along in October or November.

Redirect examination by Mr. Maxson:

Q. You have just testified in regard to this resolution of September 30, 1909, which increased the salaries to $3,000 a year; now, was that resolution passed previous to the time you saw this resolution of September 8, 1908, or after?

Mr. McCarter: Objected to; that has been twice gone into.

The Court: I think it is on the record.

Q. Mr. Fish, when did you first hear of the allegation that Mr. Harrison loaned the company $2,000? A. When Mr. Nasmyth made his report to me after the audit was made.

By the Court:

Q. Did Mr. Nasmyth make at written report to you? A. No, sir, I would not call it a written report.

Q. Did he write out about these transactions? A. Oh, yes, he has his report there that he showed me.

RECESS TO 2 P. M.

AFTER RECESS.

MR. CHARLES NASMYTH, sworn in behalf of the complainant, testified as follows:

Direct examination by Mr. Maxson:

Q. What is your business? A. Public accountant.

Q. Where is your office? A. 15 Wall Street, New York City.

Q. How long have you been a public accountant? A. 15 years—actively engaged.

Q. Now, when did you first have anything to do with the accounts of the Harrison Milling Company? A. I think it was in September, 1910.

Q. And by whom were you engaged? A. I forget whether my first instructions were received from Mr. Fish, or his attorney, Mr. Knowles, at that time; it was one or the other.

Q. To what, especially, on the books of the Harrison Milling Company, was your attention directed? A. My original instructions were, to make a detailed examination of Mr. A. Gould Harrison's personal account.

Q. And did you do so? A. I did do so, yes, sir

Q. And did you make an examination of any other account besides that? A. Yes, sir, some matters, some collateral matters came up from that, and I discussed them with Mr. Harrison and his attorney, and I was requested to obtain information regarding those subjects.

Q. Mr. Fish and his attorney, or Mr. Harrison and his attorney? A. Mr. Fish and his attorney, I meant to say.

Q. Did you make notes of what your investigation of the books showed at the time? A. Yes, sir.

Q. Is this book I show you, your notes that you

made at the time? A. Yes, sir, those are the notes I made—the working papers that I used.

Q. Now, were these notes made at the time you made the examination? A. Yes, sir, right in Mr. Harrison's office—the office of the Harrison Milling Company.

Q. Can you refresh your recollection from those notes, so that you can testify as to the first account that you examined? A. Yes, sir, the first account I examined was Mr. Harrison's personal account, showing the debits and credits to his account from the time that Mr. Fish first became connected with the company or had an interest in the company, to the date of my examination.

Q. And when was your examination? A. It commenced September 26, 1910.

Q. And continued until when? A. Until about October 4th, I think,—or, I think, I went over later than that—the 5th and 6th my notes show—to get some further information on some subject.

Q. Which book of the Harrison Milling Company contained the first account that you examined? A. The ledger for 1903 will be the first account, I think; that is here on the desk now before me.

Q. Point out in this book the account that you examined at that time? A. That appears to be it (indicating on page 46 and carried forward to page 68).

Q. And have you identified this book on the record? A. On my record?

Q. No, on the record here—— A. Yes, sir, my examination commenced there with that item of August 3rd; that is my mark.

Q. And there is a mark in pencil on the book showing where you began your examination? A. I think that is my pencil mark.

Q. August 3rd of what year? A. 1903.

Q. Now, for what purpose did you make the examination of this account? A. Primarily for the purpose of determining Mr. Harrison's overdraft.

Q. Well, now, what overdrafts did you find in that account? Will you point them out? A. I found that the account at August 3rd, 1903, indicated an overdraft of $1,347.54; August 1st, I might say, is the beginning of the fiscal year; and I think up to July 31, 1904, the books show an additional overdraft of $785.31.

Q. What was the last date? A. July 31, 1904; that is the close of that fiscal year.

Q. Now, what overdraft, if any, did you find in the books on the 18th day of November, 1905; that is, I mean to say, what was the total of the overdraft, as shown by the books at that time? A. The total overdraft at November 18, was $4,113.17; this is the date at which the extinguishment of the overdraft was agreed upon, November 18, wasn't it?

Q. Yes; now, how long between the time when you found that overdraft of $4,113.17 was it until the overdraft amounted to the sum of $4,552.63? A. What was the amount you gave me then?

Q. $4,552.63. A. I don't find those exact figures; I find a total of $4,563.88 at November 30, 1905. Now, is not that a difference of $11.25? There is a credit on November 23rd, that would account for the difference, I believe.

Q. Then, between November 18, 1905, and the 29th day of November, 1905, there was an additional overdraft, as shown by that account, of how much? A. $439.46.

Q. Now, at the time you finished the examination of this account, what was the total of the overdraft, as shown by the books, charged up to Mr. A. Gould Harrison? A. I think at the time

I closed my examination and commenced it, the overdraft was $865.91; all overdrafts prior to August 3rd, 1909, having been written off.

Q. That is not what I want; what I ask is this: what were the total overdrafts of Mr. Harrison, between the 29th day of November, 1905, and the time when you finished making your examination?

Mr. McCarter: Objected to; the witness has answered the question, that from the books at the time he finished his report—giving allowance for the credits appearing on the books, there was an apparent debit balance against Harrison of so much. Now, what Mr. Maxson wants this witness to do, is to ignore the credit; I don't know whether I understand the counsel's question.

Q. (Question read). A. I can give it to you approximately.

Mr. McCarter: He ignores the credit entries on the books.

The Court: Of course, the instruction of the Court is, that you testify from what you gained from the books. Then, if there is anything outside of that, you can go into that afterwards.

Mr. McCarter: Mr. Maxson is asking the witness to read only one side of the ledger.

The Witness: But the other side refers to the writing off or credits for these overdrafts, and, therefore, I am only asked, as I understand, to testify to what the overdrafts were.

The Court: You are asked to testify to what the books show.

Mr. Maxson: I withdraw the question.

Charles Nasmyth—By Complainant—Direct

Q. What did the books of the company, which you examined, show to be the amount of overdrafts between the 18th day of November, 1905, and the time when you finished your examination, leaving out any credits?

The Court: Just let that question be answered first; what is the answer to that question?

Mr. McCarter: I suppose, your Honor, that that question is framed in another way; it assumes there were overdrafts.

The Court: He said there were overdrafts in his prior statement, as I understand it.

By the Court:

Q. What is the overdraft between these periods—— A. $4,880, approximately.

Further direct:

Q. And that is in addition to the overdraft of $4,563.88 which you have previously referred to? A. Yes, sir.

Q. Now, was your attention at the time you were examining these books, directed to the purchase of some stock of the Harrison Milling Company from Ida M. Beyea? A. Such a transaction came to my knowledge from an examination of the books, yes, sir.

Q. And where, if in any place, was there an entry on the accounts of the company showing what this transaction was? A. I have forgotten the year; it was February, I think, 1907, if I remember right.

By the Court:

Q. Look at the book; is there something in the book that shows this transaction to be a stock? A.

Yes, sir, there is a record of a payment for that stock.

Mr. McCarter: We have no objection to his referring right to the books now.

(A book is given to the witness and the witness examines it.)

The Witness: There was a payment made to Ida M. Beyea in two checks, of $337.32, and another check of $1,000, aggregating $1,337.32, on February 21, 1907.

Further direct:

Q. Now, in which book do you find that entry? A. In the cash book on folio 382, under the date of February 21, 1907.

Q. Now, does that appear on the book as having been an amount of money paid out of the treasury of the company? A. The books show that, yes, sir; there is a check drawn on the company's bank account for those checks; there were checks drawn on the company's bank account for the amount of $1,337.32.

Q. Did you have any conversation with Mr. A. Gould Harrison about that transaction? A. Yes, sir.

Q. State what he said? A. Well, I don't recall that we had any particular detailed discussion on that particular payment; they speak for themselves.

Q. Did you ask Mr. Harrison what that transaction was there? A. Yes, sir; he admitted it was in payment of the shares in question.

Q. Did he say anything further about it? A. I think he did; I won't be sure it was at that time; he intimated he had made the company a loan, but it was not in reference to that payment that that came up; it was in reference to an entry on the

other side of the cash book—the loan is also shown there; it was in reference to a receipt or a debit in the cash book for $1,500 for 15 shares of stock received from Ida M. Beyea.

Q. And where is that entry? A. That is on folio 482 of cash book, under date of February 21, and that is what caused Hr. Harrison's reference to the $2,000; I could not understand how he could enter the receipt of $1,500 when he did not receive the cash, but he only received shares for it.

By Mr. McCarter:

Q. Do you mean to imply by that, that that is his handwriting? A. No, sir, it is the bookkeeper's handwriting.

Further direct:

Q. Now, after the discussion with Mr. Harrison about this item, did you examine the books to find out whether or not there was any credit to him of the sum of $2,000 made by him to the company? A. I looked for such a loan. He told me that the loan had been made, and he showed me as evidence of the fact a stub in his private check book, indicating that a check had been written for $2,000 to the company; but that was months before this particular transaction.

Q. Is this the check that he showed you? A. No, sir, he only showed me the stub of a check; that is the time of it—September, 1906.

Q. After having seen the stub of the check-book, did you then make an examination of the company's books to find out whether this $2,000 loan was shown or not? A. Yes, sir, I did; I could not at that time find any record of a loan of $2,000.

By the Court:

Q. Did you find from the books any record of this $2,000 loan by Mr. Harrison to the company? A. No, sir, I did not.

Mr. Maxson: May I ask if this is the stub of this check?

Mr. McCarter: Yes.

Mr. Maxson: I ask that that be marked for identification.

Marked "C3, July 31, 1912."

Further direct:

Q. Did you make an investigation through Mr. Harrison's personal check book? A. No, sir, it was a voluntary production of Mr. Harrison himself; I had asked Mr. Harrison how this receipt could be accounted for, and, as a matter of fact, the explanation that Mr. Harrison gave me, has nothing whatever to do with the transaction or the question I had asked.

Q. What explanation did he make? A. I only concluded that Mr. Harrison did not understand my question.

Q. What did he say to you? A. He said first of all, that he knew nothing about the books, that they had been entirely in the hands of Mr. Coleman, and that he had relied on his keeping them correct, and then he left the place and came back in about an hour, and he produced his check book, and he said "There you are—there is a loan I made to the company of $2,000;" I did not say much about it then; I took a note of the date and I spent some time trying to trace this loan—referring back to the date of the check, and I was not successful in finding any record connected with it.

Q. Was there any record in the account of Mr. A. Gould Harrison, or in the cash book, of such a loan to the company? A. No, sir, there was not.

Q. Did the accounts show a balance at the different periods when you examined them—the cash book and the Harrison account? Tell me this, was a deficiency in the $2,000 shown anywhere in the book which might have accounted for the loan of $2,000, which did not appear on the books? A. There was a peculiar situation revealed itself, owing to the manner in which the cash was handled, it showed that the cash was over expended, more or less, for five months, I think.

Q. There was more cash spent than there was cash received? A. Yes, sir.

Q. Where did this cash appear to come from? A. Nothing further than that there must be presumably cash received from some sources, or available from some sources, with which to make these expenditures.

Q. Now, go ahead, and state just what that condition was, as shown on the books, and what your subsequent examination of the books developed in respect to that overdraft? A. I went back some months to note the balances shown by the cash book, or the condition of the cash, and started at January, 1906; I found that there was an opening balance on January 1, 1906, of $65.26. The cash closed that month with an over expenditure of $113.34. The next month closed with a balance on hand of $107.99; and the next month, March, closed with a balance of $561.93. The next month, April, closed with a balance of $636.72. The next month, May, closed with a balance of $1,829.81. The next month, June, closed with a balance of $2,741.99. July closed with a balance of $266.55. These are balances of cash on hand or in bank. On August, 1906,

they closed with a balance of $180.79. The month of September, 1906, closed with the over-expenditure of $2,328.00—that is the month in which this check of Mr. Harrison's was drawn; it shows an over-expenditure of $2,328.00—which, of course, indicates, that there was $2,328.00, which is $328.00 in excess of Mr. Harrison's check.

Q. This item shows that that amount was obtained from some source? A. Yes, sir, or they could not have expended it. Now, during the following month of October, there were evidently collections sufficient to reduce that over-expenditure, because it shows the over-expenditure reduced to $321.41. The next month of November, has jumped up again —the over-expenditure has jumped up to $1,741.46. The month of December, that was slightly reduced —the over-expenditure amounted to $1,408.61. The close of the month of January found it practically extinguished. There was a closing over-expenditure of $101.55. The close of the month of February, in which the stock transaction took place, showed a balance on hand and in bank of $761.73. The overdraft had been entirely extinguished; there had been collections enough to show a balance of $761.73; it goes on after that, and the balance is always intact after that.

Q. That is to say, then, your examination of the books showed that this deficiency in the cash account, which might have accounted for this $2,000 loan, was made up from other sources, until eventually the whole amount was supplied from the treasury——

Mr. McCarter: Objected to.

The Court: Put it in another form.

(Question withdrawn.)

Charles Nasmyth—By Complainant—Direct

Q. Then, did the examination of that account, which you have related in detail, show that $2,000 in cash had come to the treasury from Mr. A. Gould Harrison? A. No; it showed that at some time during that period we have been going through, that the maximum amount that must have come to the treasury from some source was $2,300.28.

By the Court:

Q. But, in your investigation of the books, it is not ascertainable from what source that money came? A. The books did not guide one in that; I only had Mr. Harrison's explanation to guide me in that.

Further direct:

Q. I want to know this: do the books, when at the expiration of this account, show that by any possibility Mr. A. Gould Harrison could have made a loan of $2,000 to the company which was not repaid?

Mr. McCarter: Objected to.

The Court: I will admit it.

A. The books of the company show neither the receipt of $2,000 or the repayment of $2,000.

Q. Now, explain to the Court where this deficiency in the cash of $2,300 and some odd dollars that you have spoken of, was replaced, and from what source it came from. A. I only know from what Mr. Harrison told me in reply to my questions.

By the Court:

Q. The books don't show it? A. No, sir.

Further direct:

Q. The books don't show it? A. No, sir, Mr. Harrison told me that the company was in need of money, and that he had loaned $2,000 to the company, and he produced his check stubs to show that he had written a check for that amount; I asked him what had become of the $2,000, and he told me it was in the safe, and used as required, which would account for the receipt and payment of the loan, or give account for it, because, of course, it would automatically extinguish itself, for it was not entered on the books.

Q. Is there anything in the books to show you in your examination, that $2,00 came to the company from any other source that you know of? A. No, sir, I don't know. If the $2,000 was shown on the books and was properly deposited, why, there could not have been any over-expenditure of the cash; it is the only explanation that would account for such a condition.

Q. If $2,000 were— I withdraw that—did the books show that loan at the time when you finished your examination? A. No, sir, there was no record of that loan on the books of the company that I could find.

By the Court:

Q. Over what period did your examination extend? A. There was no definite period, as I mentioned in the beginning. My original instructions were, to make a detailed examination of Mr. Harrison's personal account, and these things, as they came up, I sought to analyze and explain.

Q. Was your investigation directed towards his account? A. Originally, and other matters came up which Mr. Fish wanted me to look into, and I

did, and this was one of them—particularly in regard to the purchase of the stock.

Q. In your examination of this particular account, did you take it upon yourself to trace this $2,000 check? A. I could not trace it further than to see if the cash showed any receipt, and the only indirect receipt it showed was through the over-expenditure.

Further direct:

Q. But was that over-expenditure met from any other source, subsequently, according to the books? A. No, sir, it was automatically provided for by the receipts of the company—as the money would come in, that over-expenditure would extinguish itself, because the cash received would offset it; it was only a matter of bookkeeping that showed this condition.

Q. Then, between the 18th day of September, 1906, and the time when you finished your examination of the books, there had been enough money in excess of the amount expended, come in to extinguish that Twenty-three hundred and odd dollars, without respect to this $2,000?

Mr. McCarter: Objected to; he has not said that.

A. There was no over-expenditure indicated after the month of February, 1907—the month in which the stock transaction took place.

Q. But, in order to extinguish this account, this overdraft, so that it appears to have been estinguished on the books, the money must have come from somewhere? A. It came from collections as money came in. If the company owed him any money, as the money came in it would replace what the company was over-expended, and that would put

his $2,000, which he had in the safe, or was supposed to have been in the safe, intact.

Q. So that, if $2,000 went in the safe in cash, it is there yet, as far as the books show? A. Not necessarily; it must be there, if it has not been taken out, naturally.

Q. I mean to say, as far as your examination of the accounts goes? A. There was the money there to take it out in the month of February, because there was a balance on hand there, if Mr. Harrison had $2,000 in the safe; the company had sufficient money to leave that $2,000 intact, and all he had to do was to take it out of the safe.

Q. Now, did you find some dividend account in your examination of the books? A. Yes, sir, dividends checks, which indicated dividends had been paid with them; there is a check of $90.00 for one year's interest on stock; but I think Mr. Harrison explained that he gave that as a kind of an additional bonus to the Beyeas. The check is marked "one year's interest on stock," and so it was a perfectly natural explanation.

Q. When it is dated? A. February 15, 1907.

Q. Do the books show a dividend declared at that time? A. Well, the minute book would have to show that, but I understand there was no dividend declared at that time.

Q. Was there no dividend account of the company on the books? A. No, sir, this did not go to any dividend account; it went as a direct charge to Ida M. Beyea's account—yes, on February 19th.

Q. Will you read that entry in the cash book? A. On Folio 383 of the cash book, under date February 19, Ida M. Beyea received a check for interest and dividend on bonds, it says here, but on the check itself it says, "Stock;" February 15th,

the check is, but the cash book entry is February 19; it says "Stock" on the check—"one year's interest on stock."

Q. Do the books show a payment of dividends to any of the other stockholders at or about that date? A. I do not see that it did; I am told there was no dividend paid to anybody else.

Q. Do the books show it? A. No, sir.

Q. Did you have any conversation with Mr. Harrison about it? A. No, sir.

Q. Now, September 18, 1906, do the books show Mr. Harrison indebted to the company in any sum? A. The books show that he was indebted, yes, sir.

Q. How much, approximately? A. Well, it is a very small amount at that time, because Mr. Harrison had just closed the account out there on July 31st, which left him a credit balance of $68.48 Now, you say September 18—September 20th is the last I have here—so it will be a little over $100.00, the overdraft.

Q. Now, did you see checks with which Mr. Harrison paid for the stock? A. Yes, sir; I saw those.

Q. I show you two checks, one for $1,000, drawn to the order of Ida M. Beyea, dated February 21, 1907, and another drawn to the order of Ida M. Beyea, for the sum of $337.32, on the same date, February 21, 1907, and I ask you whether those are the checks? A. That is only two of three checks.

Q. Can you find the other one? A. Yes, sir, the first check was for $462.68, paid to the cashier of the Scranton Bank, with whom, I was informed, the stock was hypothecated, and this was to redeem it. The first check is for $1,000, and the second check for $337.32. The smaller check is the first

one, because it says here, "on account of stock, H. M. Co."; and the stub reads, "Account 15 shares of stock, H. M. Co." The thousand dollar check reads, "In full of all demands to date."

Q. And are those all the checks that were shown to you as being the checks by which the stock was paid for? A. I got these checks out of the vouchers; I found those checks, and they agreed with the amount, and I asked Mr. Harrison about them, and he said they represented what they purported to represent.

Mr. Maxson: I offer these checks in evidence, I offer in evidence the three checks last referred to, and also the check for $90.00, previously referred to as a dividend or interest on stock.

Marked "Exhibits C 4, C 5, C 6, C 7."

Q. Will you point out on the books where the charges appear for those checks? A. On Folio 383 of the cash book, under date February, 1907. February 19th is the $462.68. February 21, are the two checks aggregating $1,337.32. The $90.00 check for interest is under date of February 19. (Referring to the last four exhibits, Mr. Stenographer.)

Q. Now, at the time, at or about the time when Mr. Harrison purchased this stock from Ida M. Beyea, was there a loan had at the bank for the Harrison Milling Company? A. I think the same day as the checks were drawn, there was a note discounted at the bank for $2,000.

Q. Is that note among these vouchers? A. Yes, sir, February 20, 1907, was a three months' note, drawn for $2,000, to the order of Evelyn Harrison, and evidently discounted at the Company's bank.

Mr. Maxson: I offer that note in evidence.

Marked "Exhibit C 8."

Charles Nasmyth—By Complainant—Direct

Q. Do you recall having some conversation with Mr. A. Gould Harrison about a check drawn to his order and signed by Mr. F. K. Fish? A. What was the amount of the check, approximately—I do not recall.

Q. For $115.00? A. Oh, yes, yes.

Q. And was that check shown to you? A. No, sir, he told me his counsel had the check, I think.

Mr. Maxson: I call for that check.

Mr. McCarter: Here it is (handing it to Mr. Maxson).

Q. Is that the check which was shown to you at that time? A. This has not been shown to me; I have not seen the check.

Q. What was the conversation with Mr. Harrison? A. I don't recall whether my conversation was with Mr. Harrison or with his bookkeeper. I had occasion——

Mr. McCarter: That will not bind us.

A. I think it is quite probable that I did talk with Mr. Harrison. The stub of the check showed an erasure, and there was some importance attached to the history of that check. I made inquiry as to why that erasure had been made, which was made with a knife, and it was not customary to make that kind of erasure; I could not find a similar occurrence anywhere else; there had been erasures by striking out with the pen, and the bookkeeper, Mr. Tichenor, told me he could not explain why that erasure had been made in that way.

Q. Is that all the explanation you had of this check do you recall what you asked with relation to it at the start; what inquiry was made with relation to it?

Mr. McCarter: I would like to know; I do not see the materiality of this at all; there is no allegation of this in the bill; and a conversation between a bookkeeper and this gentleman regarding the same erasure, never brought to our attention, I do not think it is competent, unless they give us some explanation of it.

Mr. Maxson: This check purports to have been there and was drawn and went through the bank on the 6th of November, 1909, and is signed "Harrison Milling Company, A. Gould Harrison, Treasurer; F. K. Fish, President;" and on the argument, the preliminary argument in this case, counsel made a great point of the fact that here was a check——

The Court: You are now trying to draw from the witness what this check was for?

Mr. Maxson: What he knows about it. He had some conversation with Mr. Harrison, and saw the check book, and I went to find out what he knows about the transaction.

The Court: Well, I will admit it, but I do not think it is necessary at all to the case.

Q. (Question read). A. There was some further conversation.

By the Court:

Q. What did you say in that conversation with Mr. Harrison or the bookkeeper; what passed between you? A. I asked the bookkeeper if he could tell me what certain letters would stand for in the name, or what name certain letters would stand for; that I thought from parts of the letters that had not been erased, I could make out.

Q. What letters do you refer to? A. Letters on the stubs that the erasure had been made on, and

I learned that a relative of Mr. Harrison's, named Mr. Gould,—and the indication was that this check, the stub anyway, had been originally drawn to this Mr. Gould, and had been erased, and Mr. A. Gould Harrison's name entered in place of it.

Q. Do you remember in whose handwriting this all was? A. No, sir.

By the Court:

Q. Did you make a statement to Mr. Fish? A. Do you mean a report?

Q. Yes. A. No, sir, I only made a verbal report to Mr. Fish's attorney, and afterwards discussed it with Mr. Fish and his attorney.

Q. You have not made written statement of this examination? A. No, sir.

Q. It is quite coustomary to do that, isn't it? A. It is usual, if the instructions call for it, or if the fee permits sufficient margin to do these things.

Further direct:

Q. What were Mr. Harrison's total overdrafts, together with the original amount, which you found of $4,563.88; I just want to get the total amount? A. It is around $9,000.

Cross examination by Mr. McCarter:

Q. Are you a certified accountant? A. Yes, sir.

Q. And you were first employed in this matter by Mr. Fish's counsel? A. Mr. Fish's counsel at that time.

Q. And that was who? A. Mr. Robert B. Knowles.

Q. You were told that A. Gould Harrison had a personal account, and instructed to go out and examine it? A. That was my original instruction.

Q. Who gave you that instruction? A. Mr. Fish gave it to me.

Q. Did he tell you that there was this personal account in the ledger? A. I think so, yes, sir.

Q. And you went out there and examined the personal account that has been before us, there? A. Yes, sir.

Q. Now, there is nothing in the account designated "over-draft;" is there? A. I think there is, sir —cash slips were chiefly what it was called.

Q. Let us turn to the account—A. Gould Harrison's personal account—that you have been talking about so much—here it is, isn't it? A. Do you want to begin at the beginning?

Q. Yes. A. It does commence in the ledger for 1903.

Q. The first of January, doesn't it? A. That is where that account commenced, yes, sir.

Q. And it shows on the debit side drafts of money——

Mr. Maxson: I object to any part of the account previous to the time when we came into the company as stockholders.

A. This is where we begin.

Q. You say you commenced at that same page on August 3rd? A. Yes, sir.

Q. Now, on the debit side of that account, appear certain charges to Harrison? A. Yes, sir.

Q. There does not appear any word "overdraft" there, does there? A. There is no word of any kind.

Q. And on the credit side you find credits to Mr. Harrison, don't you? A. Yes, sir, some credits.

Q. Now, what you designate an overdraft, is the difference at any time between the amount that is debited and the amount that is credited? A. Yes, sir.

Q. Well, now, you find, don't you, the credit on the account in accordance with certain resolutions? A. Well, I cannot say that exactly—no, sir.

Q. Do you find any credits on the account at all? A. Yes, sir.

Q. Let us have them—look at the account. A. I have got to get the date and then I shall know where I am at.

Q. As quick as you can, then.

Mr. Maxson: What credits do you refer to, Mr. McCarter?

The Court: The resolutions he refers to, and the charges in the book corresponding, in accordance with the resolutions.

A. You see, Counsellor, these are all debits, both on the credit and debit side; there were no credits.

Q. Do you find any credits at all? A. Not yet, no, sir.

Q. Go on and see if you don't find any credits sometime? A. Oh, yes, there are some credits.

Q. They are awfully hard to find? A. Yes, sir, because they are very few.

Q. I ask you for the first credit. A. $11.25, on November 23.

Q. What year? A. 1905.

Q. The next one? A. March 31, 1906.

Q. How much does that amount to? A. $4,552.63.

Q. What page does that refer to? A. 590.

Q. Of what? A. Presumably the cash book.

Q. What does it say? A. No—that is a journal entry.

Q. Don't your memorandum show any reference to that entry—March 31, 1906, at all? A. Oh, yes; there it is, sir, "Charge salary account and crediting A. Gould Harrison's account $4,552.63, balance to December 1st transferred to salary account," it says.

Q. That is a credit entry? A. Yes, sir.

Q. Does that leave a balance over what you call

"overdraft," or does that wipe out the account? A. No, sir, it wipes out the account on that date.

Q. So that, at the date of March 31, 1906, there was no overdraft, was there, on the books? A. Not after that credit, no.

Q. Now, is this account continued later? A. Yes, sir, to the next ledger, I presume.

Q. Do you find any more charges or more credits? A. Folio 58 in the new ledger—carried a debit side balance forward of $35.30.

Q. Which appears at the foot of the other account? A. The head of the new account, and at the foot, of course, of the other one. 20

Q. And that goes on down to what date? A. That goes on down to February, 1908.

Q. And do you find any credits at all? A. Oh, yes.

Q. Well, what is the amount of the debits? A. At the close of that account, or where, when the account was transferred to the new ledger, there was a debit balance of $959.61, apparently.

Q. And there had been credits of $5,544.65; what is that due to; you did not take any account of these credits at all, did you; will you kindly give me that journal entry, December, 1907, Folio 58? A. I would like to be able to trace that entry; it may be a journal entry—no date to it, 1907, December (book handed to witness). There was a credit on September 25, 1907, of $386.74; that is Folio 561 in the journal; that is an overdraft, I think, or covers certain overdrafts or drawings in August, 1907. 30

Q. In other words, the account is credited with that much money? A. Yes, sir.

Q. That is all you know about it? A. Yes, sir, that is all I know about it. 40

Q. Now, is that the end of the account? A. No, sir, the account is carried forward to another ledger.

Q. What ledger is that? A. This is ledger from 1907.

Q. Let us have that, please. A. 1907.

Q. Is there a later ledger in the room? A. I think this is probably meant for 1908; it is a loose leaf ledger—$959.61 is carried forward.

Q. Do you find more debit entires made? A. Yes, sir.

Q. Do you find any credits? A. One credit there of $50.00, which was for a horse, I think.

Q. Is that all? A. That is all on this sheet, unless you go over to the other side.

Q. Do you find more debits? A. Yes, sir.

Q. And on the other side, do you find any credits? A. A credit of $2,000, under date of July 31, I think it is 1909; it does not give it there; Folio 75, I believe.

Q. And that balances the account to when? A. To the end of the fiscal year 1909, which is July 31.

Q. Then you find four small credits following that under sundry dates of 1910 and 1911? A. Yes, sir.

Q. Can you tell me what the entry under date of July 31, 1909, is? A. Yes, sir, the $2,000 is a journal entry, writing off something, folio 75 in the journal; it is simply a charge to the salary account and a credit to Mr. Harrison to balance his account.

Q. $2,000, isn't it? A. Yes, sir.

Q. Why don't you say so? A. I thought it had been said so often that I thought it was unnecessary.

Q. Now, while you were making this examination of the business accounts, as I understand your testimony, you stumbled across the question of the purchase of this stock, and saw some checks which were, apparently, company checks, and your curiosity was roused and you made some inquiries of

Mr. Harrison and the bookkeeper about it; is that right? A. I was not stumbling through this matter; I was instructed to do certain things, and I think one of those things was, to look up the transactions in connection with this stock purchase.

Q. You did not tell us that before; were you instructed to examine that question of stock? A. Yes, sir.

Q. Hadn't you found something about it that you reported to your clients, and didn't they then instruct you to pursue it? A. I presume that is 20 so; I cannot remember.

Q. You were told by Mr. Harrison, and shown his personal stub, to the effect that on September 18, 1906, he had loaned or advanced, or put into the treasury of the company, $2,000? A. Yes, sir.

Q. Did Mr. Harrison offer to show you the check, and did you say the stub was sufficient? A. No, sir, I think not; my recollection is, that he said the check was in his counsel's possession; I am not sure of that.

Q. Did you make a request to see the check? A. I think so. 30

Q. And were refused? A. If I did not see, I was refused, or for some reason or other.

Q. Did you look into the stub, or the company's check book, to see if there was any there? A. Yes, sir.

Q. Didn't you see it? A. No, sir.

Q. Did you go to the Bank of Montclair and see if the check had been deposited there? A. No, sir.

Q. Did you look into the company's pass-book and see if it was there? A. I do not recall.

Q. Would not that be a natural thing to do? A. Yes, sir. 40

Q. Did you make any of these examinations? A. I don't know.

Q. Do you know whether, in fact, you made any

examination either of the company's check stub, of the company's pass-book, or the company's account at the Montclair Bank, to ascertain whether or not Mr. A. Gould Harrison's statement to the effect that the company had received $2,000 was true? A. I think I did.

Q. And what do you say was the result of your examination? A. That I have not been able to find any trace of the loan to the company.

Q. Did you look at the stub of the company's 20 check book to see if it showed a deposit of that much money? A. I think I did, and it showed nothing at that time.

Q. You are sure of that? A. Yes, sir.

Q. Did you look at the pass-book? A. I think so; I think I did it.

Q. You say nothing showed? A. That is it.

Q. And did you go to the bank? A. No, sir.

Q. You did not? A. No, sir; I accepted the explanations that were given me.

Q. As I understand your analysis of the cash account, it appears that between September and 30 February following, the company received from some source, from heaven or some other place, a large amount of money, in the neighborhood of $2,000? A. It must have obtained it from somewhere, as it used it.

Q. And the books don't show where it got it? A. No, sir; in fact, the books show it did not get it.

Q. Now, did you learn, while examining these books of a system, of bookkeeping that was rather peculiar, that this Mr. Coleman had, with regard to the use of tickets? A. You refer to carrying Mr. Harrison's loans on tickets—that is the only thing 40 I recall; I cannot lay much responsibility upon Mr. Coleman, because——

Q. I ask you what you learned with regard to the plan that Mr. Coleman availed himself of in the use of tickets? A. I cannot recall that I was told anything further than what Mr. Harrison told me, which was to the effect that he carried his loans on tickets.

Q. What did you learn with regard to the habit of Mr. Coleman in connection with tickets? A. Nothing at all regarding Mr. Coleman's habits about tickets, or anything else, that I know of.

Q. Who kept the books? A. I don't know; I am informed Mr. Coleman kept them.

Q. Who kept the tickets? A. I don't know.

Q. Were you informed that Mr. Coleman did that? A. No, sir; I was not specifically informed that Mr. Coleman kept any tickets at all.

Q. Didn't you learn anything at all about tickets? A. Who kept the tickets I have no idea.

Q. What do you mean by "kept his loans on tickets"? A. If he borrowed money, he put it on a ticket, and that went into a drawer, and it was counted as cash, and it was not entered on the books at all; the ticket was there and represented cash in balancing the cash.

Q. When did you learn that? A. When I made my examination.

Q. And Mr. Harrison told you? A. Mr Harrison, and the bookkeeper also told me, I think, but I cannot say about the bookkeeper, because he would be speaking from hearsay, anyhow.

Q. What bookkeeper was it you saw? A. Mr. Tichenor.

Q. I call your attention to this cash book on page 382, where the following entry appears: "Ida M. Beyea, 15 shares of stock"? A. Yes, sir.

Q. "Account of ticket on loan?" A. Yes, sir.

Q. So that you find on the book that entry? A. Yes, sir.

Q. You now recall that? A. Yes, sir.

Q. What did you learn about that entry? A. First of all, Mr. Harrison could not explain anything about it; he said he left matters entirely in the hands of his bookkeeper, and later I asked either Mr. Harrison or his bookkeeper whether that would not indicate that when an entry was made on the book representing that a receipt of cash had been, or a certain amount of cash had been received, when it had not been received, that the cash would have to be accounted for in some way, and that, therefore, this item indicated that the bookkeeper made that entry on having received fifteen shares of stock, and that, in representing cash that Mr. Harrison had put a slip in the drawer, which slip was tantamount to being a loan of $1,500 to him.

Q. Are you repeating now your talk with the bookkeeper? A. Yes, sir.

Q. This Mr. Tichenor? A. Yes, sir.

Q. What did he say? A. Mr. Tichenor assumed no responsibility.

Q. I ask you what he said? A. He said he knew nothing about it—he did not make those entries, and that Mr. Coleman kept the books, and had his own way of keeping them.

The Court: I suppose that your line of inquiry of this witness will take considerable time?

Mr. McCarter: Yes, sir.

The Court: Then the court will now adjourn with this witness on the witness stand, and I shall have to fix a date later upon consultation with both counsel.

Adjourned to a day to be assigned.

Charles Nasmyth—By Complainant—Cross 10

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK K. FISH, Complainant, and A. GOULD HARRISON, EVELYN L. HARRISON and THE HARRISON MILLING COMPANY, Defendants.	On Bill, &c., Testimony.

Transcript of testimony taken in the above entitled cause, at the Prudential Building, Newark, New Jersey, on the fifth day of December, nineteen hundred and twelve, at ten-thirty A. M., before Hon. Vivian M. Lewis Vice-Chancellor.

Appearances:

EDWARD MAXSON, Esq., for the Complainant.

CHURCH & HARRISON, Esqs., J. HENRY HARRISON and ROBERT H. MCCARTER, Esqs., for the Defendants.

CHARLES NASMYTH resumes the witness stand.

Cross-examination (Continued) by Mr. McCarter:

Mr. McCarter: This is a bill for an accounting, and we are endeavoring to show at this time——

The Court: Whether you are entitled to an accounting or not, and the complainant had directed his energies chiefly to two facts of al-

leged overdraft on the part of A. Gould Harrison, the defendant.

Mr. McCarter: And the facts, as the complainant claims, are: that Mr. Harrison had become the owner of some stock in the company, and paid for it with funds of the company and held it himself instead of putting it in the treasury; that he had bought this stock in the Beyea Estate and had taken title in his own name, and had not paid for it himself, but that the company had paid for it. This witness is the expert for the complainant, and he was under examination when we adjourned.

Q. Referring to the stenographic notes of evidence, I find on page 81, to refresh your recollection, the following occurred between yourself and me, introducing the particular matter by the previous questions; I asked you, "Q. Did you ask Mr. Harrison what trat transaction was there?" You replied, "A. Yes, sir; he admitted it was in payment of the shares in question. Q. Did he say anything further about it? A. I think he did; I won't be sure it was at that time; he intimated he had made the company a loan, but it was not in reference to that payment that that came up; it was in reference to an entry on the other side of the cash book—the loan is also shown there; it was in reference to a receipt or a debit in the cash book for $1,500 for 15 shares of stock received from Ida M. Beyea. Q. And where is that entry? A. That is on folio 482 of cash book, under date of February 21, and that is what caused Mr. Harrison's reference to the $2,000; I could not understand how he could enter the receipt of $1,500 when he did not receive the cash, but he only received shares for it." Now, where is the entry of the receipt of $1,500 that

you referred to in that answer? A. I shall have to see the cash book, Mr. McCarter. (They get it for him.) Yes, sir, on page 382, under date of February 21 is the item I had reference to, I think.

Q. Read the item, will you? A. "Ida M. Beyea, 15 shares of stock to A. Gould Harrison, account on ticket of loan," I think it reads, $1,500.

Q. Look at it again—"Account ticket on loan"? A. Yes, sir, that is right.

Q. $1,500? A. Yes, sir.

Q. That is the receipt of that much cash? A. It purports to be the receipt of $1,500 in cash, excepting so far as it is modified by the explanation of the entry.

Q. Now, did you make any inquiry to ascertain what the words "account ticket on loan" mean? A. I think I asked the bookkeeper about that—not Mr. Harrison.

Q. And that bookkeeper's name was what? A. Mr. Tichenor.

Q. What did you learn? A. As I recollect now, Mr. Tichenor could not speak with definite authority, but he assumed that Mr. Harrison had charged himself with $1,500 in the cash.

Q. Well, did you learn of a habit of the office, emanating from some source or other, of having tickets which would go as temporary memoranda of cash? A. That was evident all through my examination, because these loans that Mr. Harrison was in the habit of charging up to his account, from time to time, I understood they all represented loan tickets for amounts to the aggregate of what these charges were at the time they were made.

By the Court:

Q. That is a custom of the office to carry cash loans on tickets? A. Yes, sir; he would, for in-

stance, take some money, or pay something, and instead of charging himself with it, it would be put upon a ticket and carried in the cash drawer as cash, and accounted as such in balancing the cash; I never saw a ticket; there was nothing in existence that I knew of at the time.

Further Cross:

Q. Now, you have produced here at the last hearing, some checks? A. They were produced—I did not produce them.

Q. You, I think, testified you took those checks away? A. No, sir, I don't think so; I think Mr. Fish testified, and then modified that statement that he made——

Q. Where did you get them, you did not produce them either? A. No, sir, not here in court; I never had them in my possession; I can give you the facts regarding those checks.

Q. Well, you saw them? A. Yes, sir; it came out in Mr. Fish's testimony; the question was not put to me at all; nothing in relation to that—those checks or those other papers.

Q. My associate, Mr. Harrison, and I both had in mind this: the evidence of Mr. Fish on page 70 of the notes, and inasmuch as you have referred to Mr. Fish's testimony, I am going to read a line or two from this record and see if you still adhere to the testimony you have already given—referring to these checks.

The Court: The testimony that he has given in regard to checks——

Mr. McCarter: He has just now said that he did not produce the checks, and did not take them and never saw them.

Q. Turning to page 69, Mr. Fish was asked: "Q. What knowledge have you got that the company

paid for it?" Then the record shows that Mr. Maxson said: "He has answered that question, he said we have the checks." Then the next question is, "Where are the checks?" Then the record reads: "Mr. Maxson: I have them here." Then I said, "I ask for their production;" then Mr. Maxson said: "There are all the checks that we have; you are perfectly welcome to put them in evidence if you see fit; I was going to put them in evidence." Then the record continues, on page 70, the Court said: "Are those the checks relating to the stock transaction?" To which Mr. Maxson replied, "Two of them are the checks which paid for the stock; I understood that that fact was admitted." Then I asked this question: "Q. Where did you get these checks? A. I got them out of the Harrison Milling Company's office." "Q. Who took them? A. The accountant. Q. Did you tell him to take them? A. I did not know anything about them until he told me that he had them" Now, in view of that evidence, refresh your recollection and tell us now whether you told Mr. Fish that you had the checks and that you had taken them from the office, or whether Mr. Fish is mistaken about that? A. If you read on in that testimony, Mr. Fish qualified that statement, I think.

Q. (Question read.) Do you still adhere to the statement that you did not take the checks away, and never had them in your possession? A. In my personal possession I did not—that is a fact.

Q. Did you see them while you were at the mill making your examination of the books? A. I discovered them—I mean I came across them, but I was looking for them, and I was the one that did bring them to Mr. Fish's attention, yes, sir.

Q. Did you make copies of them? A. No, sir, there was no need for it.

Q. Did you report to Mr. Fish the fact that it was these checks that paid for that stock? A. I did, I think—either to Mr. Fish or to his attorney first, I don't know which; I reported to that effect.

Q. On page 104, of your cross examination, you were asked: "Q. Did you go to the Bank of Montclair and see if the check had been deposited there?" and your answer was, "No, sir." That question, you remember, referred to a check of Mr. Harrison's of $2,000, which he claimed he had given to the company? A. Yes, sir.

Q. You said, "No, sir;" then I asked you, "Q. Did you look into the company's pass-book and see if it was there?" and you replied, "A. I do not recall." And the next question was, "Would not that be a natural thing to do? A. Yes, sir." Do you now recall whether or not you saw the company's pass-book at the time you were there? A. I don't think that I did see the pass-book; I don't think it was produced to me.

Q. Did you ask for it? A. Yes, sir; I think I did; I have reason to believe I did.

Q. Have you any recollection of it? A. Yes, sir, I have that much recollection.

Q. Well, it was shown to you? A. No, sir—as I recollect, it was not there to show to me.

Q. Whom did you ask for it? A. I suppose Mr. Harrison.

Q. Not suppositions— A. Well, I cannot remember two years ago just who I spoke to, because I was sometimes addressing Mr. Harrison and sometimes Mr. Tichenor; but mostly Mr. Tichenor; I rarely got any satisfaction from Mr. Tichenor, however.

Q. The question is, however, whether or not you have any concrete present recollection of having

asked either of those gentlemen for the pass-book? A. Yes, sir, I have.

Q. And you also have a similar present concrete recollection that it was not shown you? A. I have, yes, sir.

Q. Did you take anything at all in the way of books or checks or vouchers away from the office? A. Only my own papers—nothing belonging to the company.

Q. Then, on this same page, 104 of the former testimony, you were further asked: "Q. Do you know whether, in fact, you made any examination either of the company's check stub, of the company's pass-book, or the company's account at the Montclair Bank, to ascertain whether or not Mr. A. Gould Harrison's statement to the effect that the company had received $2,000 was true? A. I think I did. Q. And what do you say was the result of your examination? A. That I have not been able to find any trace of the loan to the company. Q. Did you look at the stub of the company's check-book to see if it showed a deposit of that much money? A. I think I did, and it showed nothing at that time." Do you recollect testifying that way? A. Yes, sir, I remember that.

Q. Do you recognize this book which I show you as the company's stub-book? A. It is a stub-book —I don't know whether I saw it or not.

Q. I call your attention to this stub-book, which you do recognize as being the stub-book of the company, don't you? A. Yes, sir.

Q. Under date of September 19, 1906, a list of deposits, including the check, "A. Gould Harrison, $2,000," making a total deposit at that time of $2272.63? A. $2,273.63, yes, sir.

Q. And you find the "A. Gould Harrison, $2,000," don't you?

Mr. Maxson: The book speaks for itself.

Q. Did you see that before? A. I do not recall that I did—if I had seen this book, I think my mark would be on it.

Q. Do you now say you asked for it and were not shown it—I ask you with regard to the stub-book? A. I can only say this, that I asked for a good deal that was not produced.

Q. Have you any concrete recollection at this time of asking for, and looking at, the stub-book? A. That book would seem to indicate that I did not see that stub-book.

Q. Have you a concrete recollection of having put your mark on that? A. Yes, sir.

Q. What was that? A. A check mark, and if it was anything, I should put a small "N."

Q. Have you got such a mark on this page of the cash-book? A. No, sir.

Q. You refer in your evidence to that page of the cash-book, to the fact that there was an entry— A. This is not the time at all—we are back in September.

Q. I called your attention this morning to your evidence in which you spoke of cash entry of $2,000 and I asked what you meant, and you referred to this as the entry, didn't you? A. No, sir, that is $1,500; that is altogether a different entry.

Q. Didn't you point this out as being the entry to which you referred? A. The $1,500—that is applying to the purchase of these shares, but this is referring to the loan which Harrison made previous to that.

Q. Didn't you refer me to some cash entry this morning with regard to your $1,500? A. And that is the $1,500 entry.

Q. Where is your mark upon that? A. I do not mark individual entries in a——

Q. What are you talking about—why do you say, that there being no mark here, you did not see it? A. Because I was not making a detailed audit of this, and if I had seen this stub-book somewhere my mark would appear there; the object of the examination, as I said at the beginning of my testimony, was to examine Mr. Harrison's personal account, and incidentally see what the transaction had been in the purchase of the stock, which was a supplementary matter.

Q. At any rate, whether you ever saw this stub or not, you now find that under date of September 19, 1906, is a list of deposits, including one of A. Gould Harrison for $2,000? A. In the stub-book.

Q. You now think you never saw that before? A. I think I did not.

Q. Why, then, did you testify, on page 104, at the bottom of the page, as follows: "Q. Did you look at the stub of the company's check-book to see if it showed a deposit of that much money? A. I think I did, and it showed nothing at that time." A. Yes, sir.

Q. Why did you answer that way? A. Because I assume that I assumed I had seen both the stub-book and the pass-book with the other books of record, and I was speaking from a recollection of two years; I did not take into consideration at the time that there were records and documents that I had asked for and not been able to obtain; I should have qualified that statement to that effect.

Q. Your recollection is now better than it was last July? A. It is better, because I have had an opportunity to look over my own papers.

Q. You came out here to testify the last time? A. Yes, sir.

Q And you refreshed your recollection about the situation before you went on the witness stand

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then? A. No, sir, I had not; I just simply came here prepared to speak from the records as they were produced, and as my recollection would guide me.

Q. Now, then, you think you were mistaken when you said that you think you looked at the stub-book and it showed nothing? A. No, sir, I did not say so; I am rather surprised that I did not, if it was producible, that is all.

Q. Then over the page you did not quite leave it at the thinking period? A. No, sir.

Q. Or stage? A. No, sir.

Q But you were asked, at the top of page 105 of the testimony: "You are sure of that? A Yes, sir." A. Then I was not sure of it; I could not have been sure of it, for I am not sure of it now.

Mr. Maxson: I ask that that stub-book be marked for identification.

Mr. McCarter: Oh, yes.

Marked "Exhibit D1 for Identification."

Mr. McCarter: I offer it in evidence

Mr. Maxson: I object to its being put in evidence now.

The Court: Well, put it in for identification at present.

Q. Mr. Nasmyth, how long were you out there, all told? A. Probably ten days.

Q. And during that time you were shown every courtesy by Mr. Tichenor and Mr. Harrison? A. Every possible courtesy, yes, sir.

Q. When you said a little while ago, contrary, apparently, to your evidence before, that you did not think you saw the pass-book and the check stub-book did you mean by that that they were purposely kept from you? A. I don't know that, indeed; I only know that on several occasions when

I asked for records that I wanted, Mr. Harrison told me they were in the hands of his attorney; whether these were some of those or not, I do not know.

Q. Now, Mr. Maxson had suggested that possibly this stub may have been altered in some way—looking at that now—that entry, if you were, as an accountant, examining this you would say there was nothing on the face of that page to indicate that that is not a perfectly regular entry, would you? A. It appears regular there.

Q. There is nothing to indicate that there was any alteration or change of that stub, is there? A. On its face, no, sir.

Q. Nor on its back either? A. When I say "on its face," I mean to say that, in order to prove that, we would have to go through all the entries and prove the cash, that is all—in order to prove that the $2,000 was included there, and was a proper entry.

Q. I have forgotten what your testimony was with regard to having gone to the Bank of Montclair to hunt up this matter? A. I said I had not gone.

Q. Do you want to change your testimony about that? A. No, sir; I was not.

Q. Now, I again refer to page 104 of your evidence, where it appears the following question and answer were made: "Q. Do you know whether, in fact, you made any examination either of the company's check stub, of the company's pass-book or the company's account at the Montclair Bank, to ascertain whether or not Mr. A. Gould Harrison's statement to the effect that the company had received $2,000 was true? A. I think I did. Q. And what do you say was the result of your examina-

tion? A. That I have not been able to find any trace of the loan to the company." A. Well, I was speaking then from recollection of the entries in the cash-book, and I don't know whether this agrees with that, but if it does, then we can trace it in the cash-book, because that, apparently, was all I had seen at the time——

Q. I show you a paper, headed, "Bank of Montclair, in account with A. Gould Harrison," and I state for your information that it is a loose sheet from the ledger—blank sheet—and I call your attention opposite the red ink check to an entry of a check, "A. Gould Harrison" of $2,000; did you ever see that before—under date of September 19, 1906, and I ask you if, now, after seeing this document you recall having seen it?

Mr. Maxson: Objected to on the ground that this paper on which the examination is being made is not in evidence.

The Court: It is not in evidence, of course, but he is simply asking him if he has seen it before.

Mr. Maxson: He is referring him to a certain entry on a paper that is not in evidence.

The Court: The objection is overruled.

Q. That being a debit entry? A. There is nothing to even show that I saw the paper —I do not recall it.

Q. I also call your attention to a sheet No. 17, of the same type, "Bank of Montclair in account with Harrison Milling Company," and find a credit entry of $2,272.63, under date of September 19, 1906, which is just the amount named on the stub to which I direct your attention, and ask you if you ever saw that before?

Mr. Maxson: I object on the same ground, and also because there is nothing on the record to show this is the book—part of the book. from the Montclair Bank; and on the further ground that the second entry referred to is not of the same amount as the entry about which the witness is being examined.

The Court: The objection will be overruled.

A. I don't know whether I have ever seen the sheet before.

Q. What is your recollection with regard to that matter, as to whether you did examine the bank book and the stub, and go to the Bank of Montclair? A. Not; I know I did not go to the bank; my recollection is, that when Mr. Harrison produced his stub-book showing me that he had, or indicating that he had drawn a check to the amount of $2,000 to the order of the company, which he said was a loan to the company, the matter dropped right there for some time; I accepted his statement, and wanted to refer to it. 2 The reference that I made, as I recollect now, was to the cash-book, and I don't think I found any $2,000 and when I spoke to Mr. Harrison about it his explanation was that the money was not put through cash—it was kept in the safe—and used as it was required.

Q. You have as accountant, advised Mr. Fish in this suit, haven't you, that as a matter of fact Mr. Gould Harrison purchased stock of the Beyea Estate, and paid for it from the company's funds? A. Yes sir.

Q. That was a discovery of yours—you were the Christopher Columbus of that theory? A. If you choose to put it that way.

Q. Having discovered it and made that charge, which is incorporated in the bill of complaint here,

do you now wish to say that when Mr. Harrison said that he had given that company the $2,000 and showed you a check stub of his own, indicating that fact—do you now wish to say that you never went a step further than to see—to examine the stub-book of the company—the pass-book of the company, or the bank of the firm right there, to see if he was telling you the truth—but you said you assumed it was all a lie, and you advised your client that the company had paid for it? A. No, sir, I assumed that what Mr. Harrison said to me was the fact, and that was that the money that he had loaned to the company was only put into the safe and used as he required it and afterwards it rested there as the balance as it was, until he afterwards repaid himself.

Q. He claimed he had paid $2,000 out of his own money into the company for which these checks which you say paid for that stock were an equivalent? A. No, sir.

Q. I show you a check dated September 18, 1906, signed "A. Gould Harrison," to the order of the Harrison Milling Company for $2000? A. This is the same check that we saw the last time, isn't it?

Q. And I ask you if you ever saw that check before? A. If this is the check that was produced at the last hearing, I have seen it before, but only at that hearing.

Check marked "Exhibit D2 for Identification."

Q. Again I want to ask you what was the basis of your claim crystallized in the bill of complaint that Mr. A. Gould Harrison had appropriated to his own account stock of this company, and had had the company itself pay for it?

Mr. Maxson I object to the form of the question. This witness is not responsible for what the bill of complaint contains.

A. I never used the term "appropriated" or "misappropriated."

Q. What was the basis of your discovery which you repeated to your client, that Mr. Harrison had taken this stock and paid for it with company's funds? A. The basis of my statement is this, that Mr. Fish had asked me to report to him, if possible, what part the company played in the purchase of that stock, and I found that checks—all the funds that had been disbursed in the acquisition of that stock, had been paid out of the funds of the company by checks issued on the company's bank.

Q. And you talked to Mr. Harrison about it, and Mr. Harrison claimed that he himself had loaned the company an equivalent amount of money for those checks? A. I don't think so; I don't think I ever had any conversation with Mr. Harrison about it.

Q. Didn't you testify that he showed you a check stub? A. You are talking about five months later.

Q. Didn't you testify at the last hearing that you had talked—did you give the advice, or pass on the discovery that you made, to Mr. Fish, which resulted in the filing of this bill, without talking to Mr. Harrison about it? A. No, sir, not at all.

Q. Didn't Mr. Harrison say he had loaned the company an equivalent amount— A. I am inclined to think that I got that information since my examination—that I did not get that from Mr. Harrison—I do not recall that Mr. Harrison or myself ever had any conversation relative to his right to draw those checks on account of the company

owing him money on account of the previous loan that we had discussed.

Q. Didn't you testify last July, that in support of his claim that he had loaned the company this money he had produced, after a short time, his check stub, and you were careful to say "not his check" in explanation of the matter? A. Yes sir, but we were then talking about the loan of $2,000 to the company which, as far as the cash-book shows, extended over a period of five months.

Q. Isn't it true that at the time you brought this matter to Mr. Gould Harrison's attention, and he stated that he had loaned to the company money which was more than an equivalent for the amount necessary to pay for this stock, that he offered to show you—after having shown you the check-stub —he offered to show you the check itself, and you said you were entirely satisfied—that it was not necessary? A. I say I did not—positively.

Q. Isn't it also true that in the conversation, in the same conversation, Mr. Harrison said to you that he had explained the matter fully to Mr. Fish and that Mr. Fish was also quite satisfied? A. I have a kind of recollection that he told me many things he had explained to Mr. Fish, but I cannot speak positively in relation to this particular entry.

Redirect examination by Mr. Maxson:

Q. Mr. Nasmyth, on page 77 of your testimony there is an answer which says: "A. I think at the time I closed my examination and commenced it, the overdraft was $865.91; all overdrafts prior to August 3, 1906, having been written off;" now, is that the way you intended to answer that question? I want to correct the record.

Mr. McCarter: Of course we have no objection to Mr. Nasmyth correcting any error in his evidence.

Mr. Maxson: This is an incorrect transcription of the testimony, I think.

The Witness: That is not right—on August 3, 1909, the overdraft shown by the books of Mr. Harrison was that sum of $865.91.

A. What date? Q. August 3rd, according to the record. A. 1910 was the time my examination went to.

Q. Then that should be 1910? A. Yes sir.

Mr. McCarter: Better let him correct the statements and not you.

By the Court:

Q. When was the loan of $2,000 made? A. September 19th, around there, 1906.

Q. And what is the correct amount of overdraft on August 3rd, 1909? A. I have not got it on August 3rd, but I suppose July 31st would be correct. Those overdrafts of $865.91 go between August 31st, 1909, and August 31st, 1910.

Q. When was the stock purchased? A. Around February 21 or the 19th, 1907.

Further Redirect:

Q. Now, leaving out all of the question of the credits on the books of the company, what do the books show as the total amount of overdraft of A. Gould Harrison from the time Mr. Fish came into this company as a stockholder down to the time you made your examination?

Mr. McCarter: It has all been gone through.

The Court: Is there an error in the amount?

Mr. Maxson: Yes, sir.

The Court: Then get to the objects of the testimony.

A. I don't think it is on record what the exact totals of the overdrafts were.

Q. On page 96 of the testimony: "Q. What were Mr. Harrison's total overdrafts, together with the original amounts which you found of $4,563.88; I just want to get the total amount. A. It is around $9,000." Now, I want to get the total amount of overdrafts, given Mr. Harrison credit—all the credit that he was entitled to for salary on the books of the company; how much, in addition to his salary and the other credits which the book shows he was entitled to, did he draw, between the time Mr. Fish came in as a stockholder and the time when you finished your examination?

Mr. McCarter: I do not think that is a proper question, your Honor; I don't think this man is a judge of what is fair or what he was entitled to. I think he is a mere examiner of books, and come here, if he comes here for any purpose, to tell us what the books indicate.

The Court: Is he qualified to testify to this point?

Mr. Maxson: Mr. Harrison has the credit for his salary on the books, I suppose.

The Witness: His account was not used at all in connection with the payment or receipt of his salary.

Q. In making your examination of these books and in determining whether or not there were any overdrafts, did you take into account the fact that Mr. Harrison was entitled to a salary from the company? A. Certainly—Mr. Harrison had received his salary.

Q. Did the books show it? A. Certainly, but through the general payroll.

Q. Now, giving Mr. Harrison credit for the salary that he was entitled to get from the company, what overdrafts did the books show he made between the time Mr. Fish came in as a stockholder of this company and the time you made your examination?

Mr. McCarter: I do not really see what you are driving at; this witness has been examined; he has stated what the overdrafts amount to; he has been cross examined; I endeavored on the cross examination to show there were certain credits which he had ignored on his statements, and that was all closed up. Now, Mr. Maxson calls attention on page 96 as a justification for this inquiry, that he asked the witness the question there just at the end of the direct examination, to which the witness replied, "It is around $9,000." I think he is going off into the same old subject. I cannot see what he is driving at; he has given us the overdraft.

The Court: I will allow this question.

Q. (Question read.) A. The question is, as to what the total overdrafts were from the time Mr. Fish went in, to the date of my examination, plus the amount that stood to the debit of Mr. Harrison at the time Mr. Fish did go in, giving Mr. Harrison credit for his salary on the books, whatever the books show he was entitled to. His salary did not enter into this amount at all. Mr. Harrison had certain credits——

Q. (Question read.) A. The total overdrafts in that period were $11,541.83, after making a deduction of the few credits that stood there.

The Court: Then this is an error on this page.

Q. On page 85 of your testimony there are two amounts given, bottom of page 84, in the month of September, 1906, closing with an over-expenditure of $2,328, on page 84, according to the record; now, what was the true amount—that relates to the month of September, 1906, when the over-expenditures were made; you were asked what the books showed by way of more cash— A. Oh, yes——

Q. Then the company had really to spend, and you said, in the month of September, 1906, the books closed with the over-expenditure of $2,328; now, is that the amount? A. I would have to look at my record, but I think it was $2,300.28.

Q. And the same sum appears on page 85, showing an over-expenditure of $2,328; that should be $2,300.28? A. Yes, sir, all through.

Q Now, on your cross examination, page 98 of the testimony, in answer to Mr. McCarter's question: "Q. Now, what you designate an overdraft, is the difference at any time between the amount that is debited and the amount that is credited? A. Yes, sir." A. That is an extremely limited definition; I shall have to correct myself on that; every debit in excess of credits is not an overdraft, naturally; I would say that an overdraft consists of an amount of money being taken, being drawn, in excess of what the drawer would be entitled to—of what the drawer was entitled to receive

Q. On page 100, question by McCarter: "Q. Does that leave a balance of what you call 'overdraft,' or does that wipe out the account? A. No, sir, it wipes out the account on that date." Now, did you mean by that answer that that wiped out all the overdrafts of Mr. Harrison to date? A. What date?

Q. Date of March 31. A. I don't know the date.

Q. The next question will refresh your recollection: "So that, at the date of March 31, 1906, there was no overdraft, was there, on the books? A. Not after that credit, no." What did you mean by that? A. Are we not confusing the words overdraft and over-expenditure? Mr. Harrison's were overdrafts; the cash book we were talking about were over-expenditures; I don't know that they were overdrafts.

Q. Was there any time between the first of August, 1903, and the time when you made this examination, when Mr. Harrison was not in default to the company by reason of overdrafts? A. I think there was a time when he had, through these credits that had been taken, that he showed a credit of some $60, maybe $90.

Q. I mean, leaving out the credit for overdrafts, which had been crossed off?

The Court: How long were Mr. Fish and Mr. Harrison associated?

Mr. Maxson: From about the first of August, 1903, down to the time when this examination was made.

Mr. McCarter: Your Honor will recall that the minutes which have been produced, and which Mr. Fish was examined upon, indicate that on two or three occasions resolutions were passed writing off these so-called overdrafts, and the books of account also indicate that credit entries were made. Now, this question is designed to get this witness to adjudicate on the assumption that these minutes are false, and those credit entries wrong. The contention that we make, your Honor, is, that this witness can simply examine the books; he is

not here to say whether the credit entries are proper—whether they were authorized, or whether they were not authorized—the fact is, that a minute seems to bear out the credit entries. The question that is put to him is, "Was there a time," assuming these entries were improper, "when there was an overdraft?" I do not think this witness has any right to assume anything about the credit entries.

Mr. Maxson: Our claim is, and it has been so held by this Court on the demurrer, I think, that these overdrafts, that the crossing off of these overdrafts was illegal—that is what we claim. Now, if it was illegal, that is for your Honor to say. On cross examination, Mr. McCarter called this witness's attention to a lot of credits, those credits being largely based on amounts of money which had been crossed off by the board of directors. I want this witness to understand that, in what I intend to ask him, the credits we claim are illegally on the books, and I want to know from him, leaving out those credits on the books, what the amount was.

The Court: Did the Court deal with that question on demurrer?

Mr. McCarter: No, sir, it could not; the issue, your Honor, will have to decide, will be whether or not the credit entries based upon the minute entries, were proper. If your Honor decides, and that decision is sustained by the Court of Errors and Appeals that they are improper, we shall have to account, and it is not worth while now to say how much we would have to account for. Our contention is, that these things are proper.

Q. On page 102 you were asked: "Q. And on the other side do you find any credits?" and your answer is, "A credit of $2,000 under date of January 31st." Now, is that the correct date? A. "I think it is 1909." A. July, that should be.

Q. What is the amount, as shown on the books, that was extended for the purchase of this stock?

Mr. McCarter: It is all in here.

The Court: Have you gone over that before, Mr. Maxson?

Mr. Maxson: I don't think so.

Mr. Harrison: I think we can show it to your Honor. See page 80

Mr. Maxson: It simply says a check was drawn on the company's bank account for the amount of $1,337.32. I am asking him what the total amount is, as shown by the books, paid for the Beyea stock.

By the Court:

Q. Well, what is it? A. $2,069.68.

Recross examination by Mr. McCarter:

Q. I do not want to go over what we have done; I want to omit that Now, Mr. Nasmyth, will you kindly give us the items which constitute the sum of $2,069.68? A. Yes, sir; on cash book, folio 382, is $1,500. On journal, folio 524, is $380. I cannot give the folio of this one, but it is a special extra allowance to balance an account for which there was no apparent consideration, $145.68; then there are two items, aggregating $44. I am not sure what those credits relate to; they are credits on the account, anyway, of $24 and $20.

Q. They constitute the $2,269.68? A. That totals up that; the $24, I have a memorandum here

that seems to indicate that it is a dividend; but the $20, there is nothing that I can be guided by; in fact, I do not believe that those belong to the cost of the stock; I think they should be deducted from the amount that I stated there; the true entry is $1,500, $380 and $145.68.

Q. Now, you have said, at the opening of your redirect examination, that the total amount of the overdraft at the time that Mr. Fish went in there down to the time that you closed your examination, was what? A. $11,541.83, I think, sir.

Q. Do I understand that you say that that is the sum, including all credit entries? A. It does not take into account the credits that have been taken from the resolutions in the minutes; except one; I do not believe there is a minute covering that last $2,000 credit taken.

Q. Will you turn to the Beyea account, as showing a charge of $2,025.68 on account of these stocks, and see if in addition to the credit item of $1,500—about which I have already asked you, and concerning which you testified last July—and see if there is not a further credit item under date of August 1st, 1907, of $525.68, carried to merchandise? A. It is those two items that I called off added together.

Q. But that appears on the credit side of the Beyea account? A. On the "E. M. B. account."

Q. And, therefore, the account is balanced—stock account on one side, $2,025.68, and the two credit entries, $1,500 cash and $525.68 on the other side? A. The account is in balance.

Redirect examination by Mr. Maxson:

Q. Did your reply about the amount paid to Ida M. Beyea include the amount represented by a check, "Complainant's Exhibit 6," for $90, Febru-

ary 15, 1907 ? A. The 15th or the 18th—$90—extra dividend.

Q. One year's interest on stock? A. It was explained to me as an extra dividend.

FREDERICK K. FISH, recalled, testified as follows:

Redirect examination by Mr. Maxson:

Q. You were asked by Mr. McCarter, on cross examination, about attending meetings at Montclair, New Jersey; on page 31 you say: "I guess we would go, sometimes, two years; the date of the minutes will tell you how often we went." How often did you go out there? A. About once, possibly twice, a year, for years—but we did not hold any meetings—very seldom we held a meeting.

Q. Were you there whenever the minute book shows a meeting was held? A. There was one meeting there that I had in doubt, although I would not deny that I was there—that was the meeting regarding the overdraft of three hundred and some odd dollars; I may have been at that meeting; I do not deny it.

Q. (By the Court:) Is that the meeting where a resolution was passed, crossing the $370 overdraft —A. I would not deny that I was not at a meeting, and on that date, possibly——

Further Redirect:

Q. That meeting of September 8, 1908, you were not there at that meeting? A. That is the meeting that I was away——

Q. You were not in the State of New Jersey? A. No, sir, I was not.

Q. You remember the entry of that minute in your handwriting in the book to which Mr. McCarter called your attention? A. Very well.

Mr. McCarter: Your Honor, the witness was examined about that, and cross examined about it, and re-examined about it.

Mr. Maxson: I have not finished my question yet.

The Court: Finish your question.

Q. (Continued.) And at the same time your attention was directed to a previous minute in the book? A. Yes, sir.

Q. Was or was not that minute entered by the direction of your attorney who represented you at that time?

Mr. McCarter: Objected to.

A. I was instructed by my attorney.

Mr. McCarter: I think the Court should instruct the witness not to answer when an objection is pending.

The Court: Do not be quite so quick.

Q. Now, your attention was directed on your cross examination to the fact that you had passed a resolution, or attended a meeting where a resolution was passed, increasing Mr. Harrison's salary to $3,000 a year——

Mr. Harrison: Middle of page 38.

Q. (Continued.) Do you remember that? A. It was a meeting between Mr. Harrison and myself; it was not a directors' meeting.

The Court: How many directors were in the company?

Mr. Maxson: Three directors. I might say that we are here prepared to account for any overdrafts we have made.

Q. That minute appears on page 30 of the minute book——

Mr. McCarter: Objected to—that has all been gone into. Now, what is the use, after six months, of coming here again and going into the same subject?

The Court: I shall permit him to correct anything in the testimony.

Q. I direct your attention to this minute of a meeting of September 30, 1909, and I ask you, is that the minute in your handwriting? A. Yes, sir.

Q. At the time that minute was entered, did you enter anything about any overdraft of Mr. Harrison's, in addition to that original overdraft of between $4,500 and $600, which you agreed to cross off? A. None whatever.

The Court: I think he stated that before.

Mr. Harrison: It was covered before.

The Court: The only thing is, it is crowding the record.

Mr. Maxson: We rest.

Mrs. Evelyn L. Harrison, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Harrison:

Q. You are the wife of A. Gould Harrison, one of the defendants in this matter? A. I am, yes, sir.

Q. And you are one of the directors of the Harrison Milling Company? A. Yes, sir.

Q. How long have you been such a director? A. Ever since my father's death.

Q. And your father was Hugh Mullen? A. Yes, sir.

Q. When did your father die? A. Ten years ago.

Q. Do you know Mr. Fish, the complainant in this matter? A. I do, yes, sir.

Q. How long have you known him? A. Oh, well, for twenty years or more.

Q. Up to within two or three years ago, what were the relations between your family and Mr. Fish's family? A. Very friendly.

Q. And you would often call upon them and they upon you? A. Well, we never went there but once, to his son-in-law's, but Mr. Fish was in the habit of visiting us.

Q. And at times would he bring someone with him? A. Well, he brought Mrs. Fish once—he brought his daughters one evening, and everything was very pleasant.

Q. Do you remember attending any meetings of the directors of the Harrison Milling Company? A. Yes, sir.

Q. And what was the first meeting that you recall? A. The first year we were in Montclair—we lived on Vincent Place——

Q. No, you did not live in Vincent Place—— A. We lived on Elm Street.

Q. Can you fix the year when you went to Elm Street? A. I should say 1903.

Q. And do you remember a meeting of the Board of Directors, at which meeting Mr. Fish, the complainant, and A. Gould Harrison, the defendant were present, in that year? A. Well, a pleasant talk and everything was harmonious; it seemed as if they took that as a meeting—the affairs were talked over.

Q. Where was that meeting held? A. At Elm Street.

Q. Do you remember the room in which it was held? A. The living room, with a grate fire; we sat in front of it, and talked business affairs and pleasantries, etc.

Q. Can you state in detail, what the general subject of the conversation was, so far as related to the Harrison Milling Company? A. No, sir, I don't know that I can; everything was pleasant, and I think later on they went to the office to go over things more carefully.

Q. Did you have any talk about the relations between A. Gould Harrison and your father-in-law? A. Yes, sir.

Q. In Mr. Fish's presence? A. Yes, sir.

Q. And what was that conversation? A. The arrangement with father had been, that he was to get along as economically as he could, and what moneys he must have in excess, he should keep track of it, and they would arrange so that it could be charged off, and that seemed to be perfectly satisfactory.

Q. Perfectly satisfactory to whom?

Mr. Maxson: Objected to; I move that that be stricken from the record—that any such ar-arrangement with Mr. Harrison's father-in-law is not binding on us; it certainly is not binding, because she says "Whatever he needs"; I move that that be stricken out.

The Court: We will let it stand as it is, for the present.

Q. Do you know, of your own knowledge, that that arrangement had been made with Mr. Mullen? A. I do.

Mr. Maxson: I object to the form of the question.

The Court: The question is in proper form. The objection will be overruled.

Mr. McCarter: The answer discloses here that this business was started originally before Mr. Fish came in, as you remember, by young Mr. Gould Harrison and his father-in-law, Mr. Mullen, who was a man of some wealth, and who had put up some money for his son-in-law, and the arrangements that the witness has just detailed is, that there was an arrangement that existed long before Mr. Fish was there, and, of course, only was good as long as Mr. Mullen and this lady, his successor, was there, but not binding upon Mr. Fish. The purpose of this testimony is to intimate that at this meeting in the Elm Street house, that was called to Mr. Fish's attention, and Mr. Fish went on and sanctioned a continuance of it.

Mr. Maxson: That is entirely improper, to state to the Court the purpose of the testimony.

The Court: They are making a statement now as to their reason for putting this witness on the witness stand, and she is testifying to facts that occurred of her own knowledge, that occurred at this original meeting.

Mr. Maxson: She has not testified that Mr. Fish was present and acquiesced in it.

The Court: She has testified that they were all sitting around the fireside.

Q. Who was present at the meeting in January, 1903, in the Elm Street house, before the grate fire?

A. Mr. Fish, Mr. Harrison and myself.

Q. What further conversation was had at that meeting, relative to payments by the company to A. Gould Harrison?

Mr. Maxson: What was the date?

Mr. Harrison: In the fall of 1903.

A. I do not quite get you.

(Question withdrawn.)

Q. You testified that you told Mr. Fish, or it was stated to Mr. Fish what the arrangement was between Mr. Mullen and A. Gould Harrison relative to his withdrawals; what further was said to Mr. Fish in that same connection, as you sat around the fireside, at the same time; did Mr. Fish express his opinion about it? A. (No answer.)

By the Court:

Q. What did he say; what passed between your husband, Mr. Fish and yourself that day before the fireside? A. I cannot remember the words, except that I thought, as I recall, that everything was agreeable; he was satisfied.

Mr. Maxson: I move that that be stricken out.

The Court: She cannot recall the words; as far as that goes, it will stand, "I cannot recall the words."

Further direct:

Q. Do you recall what he said in effect? A. No, sir, it has been too long.

Q. Do you remember what Gould said about it; did Gould say anything about it? A. Yes, sir.

By the Court:

Q. There was a lengthy conversation, I suppose? A. Yes, sir.

Q. How long were you there? A. Probably two hours.

Further direct:

Q. What did Gould say about this system of withdrawals from the funds of the company in excess of his salary? A. Well, that since we had come to Montclair, he could not live on such an amount, and, in order to keep up the character of the business, he was obliged to live at a certain limit, and that it was necessary that he should have more,—and Mr. Fish was satisfied.

Mr. Maxson: I move that that be stricken out.

The Court: That will be stricken out.

By the Court:

Q. What did Mr. Fish say in reply to that; do you recall what Mr. Fish said in response to the talk to Gould about more expense, about more expensive living in Montclair, etc.? A. He said he appreciated that, and it was necessary for the good of the business.

Q. What else did he say—if it was necessary, what might he do? A. As long as he was getting good interest on his money, and the business would pay for it, he was warranted.

Q. Warranted in doing what? A. In having more than a small salary.

Q. Was there any conversation about who had control of the business? A. Gould always had control of it.

Q. Was there any conversation at that time about who had control of it? A. Certainly—Mr. Fish knew—in fact, said, that he was not capable of running the business, and Gould had always been at the head of it and understood the trade.

By Mr. Maxson:

Q. Are you relating what Mr. Fish said, now? A. Certainly.

Further direct:

Q. Proceed. A. I know he always said that he had implicit confidence in Gould, in Gould's judgment.

Q. Anything about the matter of withdrawals, and their amount? A. Well, it was agreed that he should have extra when it was necessary.

Mr. Maxson: I move that that be stricken out; it is not fair "it was agreed at this meeting that he should have whatever was necessary."

By the Court:

Q. Do you mean that at this meeting it was agreed that he should have the extra money over and above his salary? A. That was spoken of—whatever he had had in excess was spoken of at that time.

Q. And Mr. Fish talked about it, did he? A. It was talked over, yes, sir.

Mr. Harrison: I think the question is entirely proper as binding on the complainant.

Q. (Question read.)

The Court: The objection is overruled.

Further direct:

Q. You say that he should have extra when it was necessary; was there any reference made to an amount—any statement in figures? A. I don't recall figures; I know Gould always kept a little

account book or something of that sort that he could produce.

Q. Did he produce the account book at this time, or any memorandum? A. Yes, sir, I think he always showed that book; he always kept something in his pocket, and I am sure it was shown.

Q. What kind of a book was it? A. Just a little leather book that he would put in his vest pocket.

Q. Were any figures given from that book as to withdrawals at that time? A. Well, I could not tell you.

Q. You would not be positive about that? A. I would not be positive about figures.

Q. Was anything said about the amount which he might withdraw of varying, according to the progress of the condition of the business? A. No, sir, I think not.

Q. Did he limit him to any specific amount, or did he leave it entirely to him? A. I think that was left entirely to Gould.

Q. Do you remember any other meetings of the directors of the Harrison Milling Company which you attended, at which Mr. Fish was present? A. Several times; after moving to Vincent Place, Mr. Fish came out to our house.

Q. Did he always come alone? A. All but the one time, when he brought Mrs. Fish.

Q. Do you remember the time when he brought his wife with him? A. I do.

Q. What was the first time that he came to Vincent Place—did he come alone or with Mrs. Fish? A. Alone.

Q. Can you fix the year when he came? A. Probably during 1904; I am not positive.

Q. Do you remember how long you had been in the house? A. Perhaps, only a year.

Q. And you moved in what year from Elm Street to Vincent Place? A. It must have been during 1904—about 1904.

Q. And he came out about a year after that? A. Well, I think so; I am not positive about that time.

Q. But you would fix it as some time in 1904 or 1905? A. Yes, sir.

Q. And what took place at this meeting? I withdraw that. What time did Mr. Fish arrive at the house? A. Always for dinner, usually.

Q. Did he take dinner that time? A. I am not sure; I think so.

Q. What took place after dinner? A. A general talk.

Q. Where did you hold that general talk? A. In my sitting room.

Q. What did your husband state to you and Mr. Fish? A. He talked of the business; how things were going.

Q. Anything else; did he submit any memoranda or figures of any kind? A. Usually they went always—in fact, they would go to the office to inspect the books.

By the Court:

Q. Did you accompany them there? A. No, sir.

Further direct:

Q. Was anything said by Mr. Harrison at this general meeting which you held at your home, prior to his going to the office? A. It always seemed in such a pleasant, social way, that no one ever thought they would have to remember.

Q. Now, that you have to remember, can't you do it? This, of course, is six or seven years ago? A. Yes, sir.

Q. But after taking dinner on this occasion in 1904 or 1905, and at your little meeting in the sitting room, did Mr. Harrison submit any memoranda or book? A. That was always gone over—except this little pass-book—that was always gone over down to the mill, and looking over the books there.

Q. Was that little pass-book shown at that time? A. I could not state each time.

Q. But what is your best recollection? A. I know at times—there are times when I have seen Gould take it from his pocket.

Q. What can you say about that time? A. I don't recall.

Q. Did he make any mention of figures at that meeting?

Mr. Maxson: Cannot we fix the time of this meeting?

Mr. Harrison: She says they moved from Elm Street to Vincent Place in 1904; and, as near as she can figure it, it was about a year after that—1905, some time; that is as near as she can fix it.

Q. Do you remember whether it was the warm weather or the cool weather? A. Not that time—I do not recall that.

Q. You say you are not positive whether Gould produced this little pocket memoranda book or not; would you say that he did not? A. Well, he may have and he may not; they always went to the office to be sure of seeing things straight.

Q. And checking up the figures? A. Yes, sir.

Q. Do you remember any figures being given that night? A. No, sir.

Q. What took place after this meeting? A. They went to the mill.

Q. That is, it was stated in Mr. Fish's presence, that they were going to the mill? A. Yes, sir.

Q. Do you know what time they got back from the mill? A. I do not; sometimes Mr. Fish remained with us over night, and sometimes he returned to the city; I do not recall whether he returned that night or came back to our house.

Q. Do you remember any talk at that time about money which Mr. Fish should withdraw from the corporation? A. I do not recall whether it was at that time that his salary was spoken of, or later.

Q. What salary was spoken of? A. $1,200 a year.

Q. What did he say in reference to that salary? A. I don't know, except that he needed it.

Q. And if he got that, what could Gould get?

Mr. Maxson: Objected to.

(Question withdrawn.)

Q. After Mr. Fish made this reference to his salary of $1,200 a year, was anything said about Gould's salary or withdrawals? A. I don't seem to recall.

Q. Was there any discussion at that meeting about withdrawals by Gould? A. He always spoke of them.

Q. And do you remember what was spoken at that time about his withdrawals? A. No, sir.

Q. You know that something was spoken about them? A. Yes, sir.

Q. But you have no recollection of exactly what it was? A. No, sir.

Q. Was it anything similar to what was said at the meeting in 1903?

Mr. Maxson: Objected to as leading.

The Court: Strike that out.

Q. But you know that something was said? A. Yes, sir.

Q. How long a talk did you have about Mr. Fish's withdrawal of $1,200 a year, and Mr. Harrison's withdrawals? A. Our talks at the house were always brief, as far as I was concerned.

Q. Why were you called into the meeting—were you shown anything when you went into the meetings? I withdraw that question.

Q. You remember a talk about Mr. Fish's salary of $1,200? A. I do.

Q. Did you make any objection to that salary? A. Not any.

Q. It met with your entire approval? A. Yes, sir.

Q. Was anything talked of at that meeting about Gould's salary or withdrawals? A. I think there was, but I cannot recall.

Q. Well, did you know what he was receiving at that time—do you know what Gould was receiving at that time, what salary he was receiving? A. About $40 a week.

Q. Was any statement made about the cost of living in Montclair? A. Yes, sir.

The Court: You are now dealing with the meeting about 1905, again?

Mr. Harrison: Yes, sir.

The Court: In 1903, she has stated that there was a conversation about the cost of living in Montclair; now, we are going to deal with the time they met again in 1905.

Q. What was the general substance of that conversaton in 1905? A. Well, how expensive it was to live there, and, as I said before, to be at the head of that business, Gould must live in a certain way to uphold his position.

Q. And to do that, did he make any reference to clubs—belonging to clubs? A. Yes, sir, I believe there was something spoken of, that he at times thought he would resign from the Montclair Club, and Mr. Fish objected to that; he thought it was a good thing for Gould to be in the club to meet his customers.

Q. Anything else? A. In fact, I think Mr. Fish said that the business might better pay for that than for Mr. Harrison to resign, it would be better for his standing.

Q. Was anything said about the business paying for anything else beside the club dues? A. Well, I am sure that Gould said he could not live on such an amount, and as long as Mr. Fish was agreeable—as long as the business paid for it, and he was getting good interest on his money, that he was satisfied for Gould to have such extra—not excessive, but such as it was necessary to have.

Q. Your recollection now, is positive on that? A. Yes, sir, very.

Q. When was the next time that Mr. Fish came to your home? A. It must have been on the next occasion that he brought Mrs. Fish with him.

Q. Can you fix that year? A. Either 1905 or 1906; we were having some papering done, or we were about to have some papering done.

Q. What was being done to the house at that time? A. They were papering the lower floor.

Q. At what time did Mr. and Mrs. Fish arrive at the house? A. Late in the afternoon, and they remained over night.

Q. Did you have any meeting that night, at which Mr. Fish was present? A. Well, things were talked of—I would not call it a meeting, and yet I think it was oft-times put down in the book as a meeting, rather than have me go to the mill.

Q. What was discussed at that meeting—what did you talk about—did you talk about the weather, or talk about something with relation to the business of the corporation? A. We talked about the business affairs.

Q. Did you talk about Mr. Fish's salary? A. Yes, sir, I think that was spoken of.

Q. Was the amount of it mentioned? A. Yes, sir, because he had just returned from the mountains.

20 Q. Where, in the mountains? A. I think he had been at Summit, New York State.

Q. Do you remember the time of the year that that was? A. It was either October or November.

Q. Can you fix the year? A. Not nearer than 1905 or 1906.

Q. But this other meeting was held in 1905? A. I said 1904 or 1905.

Q. And how many years after this meeting in 1904 or 1905, was the second meeting—this third meeting, at which Mrs. Fish was present when held? A. I cannot tell you exactly, only it was when the 30 lower floor of our home was being papered; it was either just before the paper-hangers were there, or directly after.

Q. And you fix the time by reference to the fact that this papering was being done? A. Yes, sir.

Q. Do you remember who did it? A. A man by the name of Titus did the papering.

Q. Can you say how many years after the second meeting this third meeting was hold? A. No, sir.

Q. Would you say whether it was one, two, three or more years? A. Not more than two years.

Q. After this talk about Mr. Fish's salary, which 40 I understood you to say you approved? A. Yes, sir.

Q. Was there any talk about Gould's salary or withdrawals? A. Yes, sir.

Q. How did that discussion come up? A. I thought I had just answered that.

Q. Well, perhaps, you will answer it again. A. That he was receiving a salary of $40, but that it was inadequate.

Mr. Maxson: Who said this?

A. And as he was doing the work—$40 was inadequate.

Q. Was anything else said about the inadequacy of this $40, or how the inadequacy was to be made up? A. Well, he was to receive a little more, with judgment.

Q. And with whose judgment? A. Well, he was to keep a direct account of it, and they were to sanction it together, and it was to be taken off at certain times.

Q. And Mr. Fish was present, you say? A. Yes, sir.

Q. Was there any reference made at that time to withdrawals which had been previously made by Gould—— A. That had not been straightened up?

Q. Yes. A. They always agreed, after a certain length of time together, to an understanding, and credited those.

Mr. Maxson: I move that that be stricken out as not responsive; we object, because it is not responsive; only the conversation can be given by this witness. Whether they agreed, is a conclusion.

By the Court:

Q. They always agreed in your presence, did

they? A. It never seemed like business; it always seemed like friends.

The Court: I will allow the answer to stand, and the Court will now adjourn until two o'clock.

AFTER RECESS.

JOSEPH A. HOWE, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Harrison:

Q. You are assistant cashier of the Bank of Montclair? A. Yes, sir.

Q. And how long have you been employed by that bank? A. Since January 19, 1895.

Q. You know A. Gould Harrison, the defendant? A. I do.

Q. Has your bank had an account in his name and that of the Harrison Milling Company? A. Yes, sir.

Q. I show you a sheet headed "Bank of Montclair, Sheet No. 17, Names, Harrison Milling Company," and ask you what that sheet is? A. That is one of our regular loose leaf ledger sheets?

Q. Taken from your original book of entry? A. Yes, sir.

Q. I call your attention to a credit entry indicated with a red arrow, under date September 19, 1906, for $2,272.63, and I ask you the meaning of that entry? A. That represents a deposit made by the Harrison Milling Company on that said date —probably composed of more than one check; still, that does not state.

Q. Have you the deposit slips for the period covered by that entry? A. I have not.

Q. What has become of them? A. Probably been destroyed—they are more than six years old; we keep them for about six years.

Marked "Exhibit D 3½."

Q. I show you a sheet, headed "Bank of Montclair, Sheet No. 2, Name, A. Gould Harrison," and ask you what that sheet represents or is? A. That is a sheet taken from our loose leaf ledger showing record of original entry, showing an account of A. Gould Harrison, check drawn by him on that day, September 19, 1906, $2,000.

Q. Does that sheet show the debit and credit entry in that account for the period covered by the sheet? A. It does.

Q. Can you say whether that debit of $2,000, under date of September 19, 1906, to which you have just referred, is the debit charge made from a check or from some other kind of a charge? A. That would indicate it is made from one check.

Q. Now for the sheet.

The Court: The sheet will be received in evidence.

Marked "Exhibit D 4½."

Cross examination by Mr. Maxson:

Q. Do these sheets at the same time show the balance of the company to its credit at these different periods? A. They do yes, sir.

Q. Do they show the balance to the account of the company on the 21st of February, 1907? A. No, sir, they do not.

Q. What was the balance of the company at the time of this deposit of $2,272.63? A. $3,963.40.

Q. Including the $2,200? A. Yes, sir.

Q. Over what period does that account go—

shown on these two sheets? A. It starts in with September 1st, 1906, and runs up to November 12th of the same year.

Q. Are both sheets the same? A. No, sir, it starts with January 26, 1906, and runs up to November 8, 1907.

Mr. Maxson: Do you produce here the leaves showing the company's account on the 21st of February, 1907?

Mr. Harrison: No.

Mr. Maxson: I simply asked them if they would do it—I cannot force them to do it. I simply want to get the balance.

The Court: What books do you want?

Mr. Maxson: This same book—these leaves are taken out—the same book, so as to show the balance at the time the check was drawn which paid for the stock.

Q. What were the withdrawals of the company during the month that this deposit was made?

Mr. Harrison: I have no objection to the question particularly, except that I think it is entirely irrelevant.

The Court: Explain the object of the inquiry.

Mr. Maxson: I want to see where they are on this sheet which is now in evidence. I am asking, so that it may appear on the record where these withdrawals are shown on this sheet which is in evidence.

Mr. Harrison: It is not proper cross examination.

The Court: See if the sheet is an accurate sheet from the bank of that account—you can go into that in detail.

Q. Then the column marked at the top, "Checks in detail," shows the withdrawal by checks of the Harrison Milling Company from its account in this bank? A. That is correct.

Redirect examination by Mr. Harrison:

Q. I show you a check, No. 1185, September 18, 1906, to the order of Harrison Milling Company, signed by "A. Gould Harrison" and I ask you what that check shows with reference to payments and charge of the same to the A. Gould Harrison account on the books of the bank?

Mr. Maxson: I object to that part of the question which asks for what the checks shows; the check speaks for itself.

Mr. Harrison: I did not choose my words, perhaps, with the degree of accuracy that Mr. Maxson suggests.

Q. With reference to payment or non-payment? A. The check is paid on September 19, 1906; it was deposited by the Harrison Milling Company on that date in the Bank of Montclair.

Q. And paid by the bank out of the funds? A. Yes, sir, paid out of the funds of Gould Harrison.

Mr. Harrison: I offer the check.

Marked "Exhibit D 2" (formerly marked "D 2 for identification").

Q. I call your attention to a large book which I show you, and ask you what this book is? A. That is the customer's ledger,—proof ledger, so called.

Q. I call your attention to an entry—entry under —a debit entry of $2,000, under date September 19, 1906, opposite the name "A. Gould Harrison," and

I ask you opposite what name do you find that entry?

Mr. Maxson: I object to the question; the book speaks for itself. I object because the book is the best evidence.

The Court: The question is, "Opposite what name does that entry appear?" I will allow the question.

A. It appears opposite the name of "A. Gould Harrison."

Q. And was that amount charged on that date against the A. Gould Harrison account? A. It was.

Q. I call your attention to a credit entry of $2,272.63, and I ask you under what name you found that entry? A. Opposite the name of the "Harrison Milling Company."

Q. What does that credit represent? A. A deposit made by them on that date.

Q. What date is that? A. September 19, 1906.

Q. Does this book contain the account of the company in February, 1907? A. It does.

Q. How far does it go; up to what period? A. September 29, 1906.

Mr. Harrison: The book is offered.

The Court: The book will be received in evidence.

Marked "Exhibit D 4¾."

The Witness: These two books are run by different clerks—the bookkeeper for each ledger—and the balance on the certain date has to correspond, and I call your attention to the fact, that on the morning of the 20th, the balances here do correspond—on the individual ledger sheet and on the proof ledger,—the balance being $1,363.40.

Recross examination by Mr. Maxson:

Q. Any reason why they should not correspond? A. No, sir, they always do correspond.

Q. Then, what was the purpose of the explanation? A. To show you our form of bookkeeping.

EVELYN L. HARRISON recalled.

Direct examination by Mr. Harrison (Continued):

Q. We are now referring to the meeting to which you last testified occurring—

Mr. Maxson: I submit it would be proper to ask when it did ocur.

Q. Do you recall the meeting at your house, when Mrs. Fish had come with Mr. Fish to supper? A. Yes, sir; I said this morning it was not exactly a meeting, but things were talked over.

Q. And was there any reference made at that meeting to Summit, New York? A. Yes, sir.

Q. What reference was made? A. They had just returned from Summit, New York.

Q. Can you say how long a time this meeting occurred after the meeting which you said occurred in 1904 or 1905?

Mr. Maxson: I object to that; she did not fix the date of that other meeting.

The Court: She said there was another meeting in 1904 or 1905—as to what year, she could not recollect distinctly—didn't you say that?

The Witness: Yes, sir.

Q. Can you say how far apart those meetings were? A. I should say about two years.

Q. And was there any discussion there at that time about Mr. Fish's salary? A. It was spoken

of—the amount was even spoken of—$1,200 was mentioned.

Q. Did the payment of that amount meet with your approval? A. Yes, sir.

Q. Was anything said about salary or drawing account by Gould? A. He showed his book, and then they went to the mill, but I do not remember figures.

Q. Was some figure mentioned? A. I think there was.

Q. What was said after this book was shown and after some figure was mentioned? A. They would go to the mill and look things over there—look over the books.

Q. Was anything further said about the necessity of these withdrawals,—said by Gould in Mr. Fish's presence—about the necessity of these withdrawals?

Mr. Maxson: I object to that. Now, according to this witness' testimony, nothing has been established about withdrawals at that meeting; she has testified that Mr. Harrison showed the book, and that they then went to the mill.

Q. When Gould showed this book and mentioned some amount, what conversation was had with reference to that?

Mr. Maxson: I object, because I do not think this witness has testified that any amount was mentioned.

The Court: She has testified that he produced a book; and now she is going to testify as to what amount was mentioned. Is that the question?

Mr. Harrison: No, sir, it is not; I want to find out what conversation was had with reference to this amount, whatever it was.

By the Court:

Q. Was there any conversation that you heard? A. That the $40.00 salary was inadequate, and as long as he made the business good for it, why wasn't he able to take a little more, and no special amount could be specified, and he was to be careful, consistent, and they were to meet, and Mr. Fish would always agree, and would say that it was all right, and that they would charge that off on the books, so that the books would show it; and there was one special occasion when Mr. Fish put in some item where he said it would come better, coming from him.

Further Direct:

Q. What would look better coming from him? A. They seem to be charged off—something in the minute book.

Q. Can you state when that was said, " it would look better coming from him?" A. At one of the meetings at the house—it was either the time before Mr. and Mrs. Fish were there together, or the time after that.

By the Court:

Q. As near as you can fix that time, it was about 1907? A. It was the time before or after.

Further Direct:

Q. Was there anything else said about the entry of a minute? A. I do not recall.

Q. You have testified now to three meetings held, one at the Elm Street house, and two at the Vincent Place house, at which Mr. Fish was present; were any other meetings held at your home at which you were present? A. Yes, sir, a later one, when

it was talked of our selling our Caldwell home, in order to buy the shares my sister held.

Q. Who was she? A. Mrs. Beyea.

Q. Was Mr. Fish present at that time? A. We talked it over at our home.

Q. Was Mr. Fish present? A. Yes, sir.

Q. What was said about it? A. Mr. Fish was very anxious that we should buy the stock, and still, in a measure, was sorry we would have to part with our home, yet thought, if we could get it in that way, it was a good way to do it; and we sold the house, and Mr. Harrison went to Scranton and bought the stock; he put the money in the safe until such time as he could go out to Scranton to buy that stock.

Mr. Maxson: I move that that be stricken out.

By the Court:

Q. Sold the home—did you sign the deed? A. Yes, sir.

Q. Were you present when the money was passed? A. No, sir.

Q. When did that transaction occur, when you sold the house? A. About 1906, I think.

Further direct:

Q. Did you ever make reference to this sale, or did Gould ever make reference to this sale, in Mr. Fish's presence?

Mr. Maxson: I object to that as immaterial; the evidence is on the record that they sold the property for this purpose.

The Court: It strikes me that it is quite material; I will allow the question.

A. Yes, sir.

Q. And what was said? A. Sold the home to buy the stock.

Q. Did you tell him that? A. Certainly.

Q. And where? A. At our home.

Q. Did you tell him what you had done with the money? A. Certainly.

Q. What did you tell him? A. That we had put the money in the business to use until we could get hold of this stock.

Q. Are you positive of that? A. Yes, sir.

Q. Where was that said? A. At our home.

Q. I show you the minute book of the Harrison Corporation marked "Exhibit C1 for complainant," and ask you whether you have ever seen that before? A. I have.

Q. When have you seen it? A. Numerous times.

Q. Where? A. At the mill.

Q. At the house? A. Yes, sir.

Q. On what occasions at the house? A. It was brought up to a meeting.

Q. At more than one meeting? A. I should say not.

Q. Do you remember what meeting it was? A. No, sir.

Q. I call your attention to resolution on the bottom of page 30, "Montclair, New Jersey, September 30, 1909. At a meeting of the Board of Directors, the following business was transacted: the salary of the President and Treasurer to be $3,000 each for the ensuing year, commencing October 1st. Meetings held at the main office, 25 Grove Street. (Signed) A. Gould Harrison, F. K. Fish." Now, I ask you if you were present at the meeting at which that resolution purported to be passed?

Q. When did you first see the resolution? A. At a later meeting.

Q. And was any request made to you concerning that resolution? A. Yes, sir.

Q. What request was made, and by whom? A. By Mr. Fish, that I sign.

Q. What did you say? A. I refused.

Q. I call your attention to a minute on page 31 of the minute book, which is as follows: "Montclair, New Jersey, October 21, 1909. At a meeting of the Board of Directors of the corporation, known as the 'Harrison Milling Company,' held at the office, 25 Grove Street, Montclair, New Jersey, the following amendments were made to the by-laws: All checks and notes must be signed by the President and Treasurer—renewal notes and drafts by either of above officers—this to take effect immediately—(Signed) The Harrison Milling Company, F. K. Fish, President, A. Gould Harrison, Secretary;" and I ask you if you were present at the meeting at which that resolution purports to be passed? A. No, sir.

Q. When was your attention first directed to that resolution? A. At a later meeting.

Q. When? A. I do not recall the date; it was in the summer time.

Q. And was any request made to you concerning that minute, and by whom? A. Mr. Fish asked me to sign it.

Q. What did you say? A. "No."

Cross examination by Mr. Maxson:

Q. Do you recall the first meeting of the corporation after Mr. Fish came in as a stockholder, Mrs. Harrison? A. I do.

Q. About when was that held? A. About 1903.

Q. Who were the officers of the company at that time, if you remember? A. Mr. Fish was President——

Q. I mean the first meeting after he came in as a stockholder of the corporation? A. (No answer.)

By the Court:

Q. This meeting of 1903—do you remember who were the officers? A. I guess Mr. Debney was present, following my father's death, until Mr. Fish came into the business.

Further cross:

Q. You have testified on your direct examination that at that meeting there were present you and Mr. Harrison and Mr. Fish—is that so? A. Yes, sir.

Q. And no one else? A. No, sir.

Q. Now, when did the first conversation take place with Mr. Fish about these overdrafts of Mr. Harrison's? A. At the meeting held at our home when we lived on Elm Street.

Q. And about what year was that? A. It must have been about 1903.

Q. Was that meeting the meeting at which Mr. Fish was elected President of the company? A. Yes, sir.

Q. That was the first meeting? A. Yes, sir.

Q. Then, did Mr. Fish make some agreement about crossing off these overdrafts? A. Yes, sir.

Q. Did he offer a resolution that these overdrafts be crossed off? A. Yes, sir.

Q. And was the amount—this was all in 1903, was it? A. Well, it was that year we were at Elm Street; I am not positive of the year.

Q. Did you ever see this resolution before—page 28 of the minute book, complainant's "Exhibit C 1"—— A. To tell the truth, I don't know whether I ever read them over very carefully, except the two that I was asked to sign that I refused to sign.

Q. This minute that I have just called your attention to, you see dated November 18, 1905? A. Yes, sir.

Q. And purports to cross over $4,552.63 overdraft? A. Yes, sir.

Q. Now, are you still of the opinion that a resolution was passed in—two years previous—in 1903, to cross that overdraft off? A. I said no amount whatever.

Q. Then, at the time this conversation was had in 1903, when there were present you and Mr. Harrison and Mr. Fish and no one else, at this first meeting, was any amount of overdraft mentioned? A. I do not recall any amount whatever.

Q. Didn't you just tell me that a resolution was passed at that time to charge off some overdraft? A. Yes, sir, but I said that there was no amount; they always adjourned to the office to look over the books to make sure of figures.

Q. Then a resolution was passed—who offered that resolution? A. Mr. Harrison spoke of it, and Mr. Fish said "Yes."

Q. Mr. Fish said he would offer the resolution? A. I did not say it in that way.

Q. Will you show me on the minute book of the company (showing the witness the minute book) where that resolution is entered? A. (No answer.)

By the Court:

Q. You speak of a resolution being passed—do you mean they passed a resolution? A. No, sir, they had a verbal understanding.

The Court: She did not say a resolution ever was passed.

Further cross:

Q. Was or was not a resolution offered at this first meeting in 1903 to cross off any overdrafts by Mr. Fish or by any one else? A. Well, I probably would not call it a resolution, but an understanding.

Q. I ask you whether or not a resolution was offered—yes or no? A. (No answer.)

Q. What was said about this overdraft—and what was done in connection with it? A. (No answer.)

Q. State just what happened at this 1903 meeting with respect to these overdrafts. A. (No answer.)

By the Court:

Q. Did your husband say anything to Mr. Fish about overdrafts? A. Yes, sir, he showed his book and they talked it over, and as I said, they adjourned to the mill to see the exact figures there, and agreed to charge that off—that was talked of before they left the house.

Further cross:

Q. And this was all at the house? A. The talk was.

Q. Was that the meeting where Mr. Fish was elected President of the company? A. I won't say that.

Q. What else, if anything, transpired at that meeting? A. (No answer).

By the Court:

Q. Did you elect officers, do you remember? A. I do not recall.

Further cross:

Q. Don't you recall the fact that Mr. Fish was elected President of this company at the first meeting held after he became a stockholder? A. I thought I said "yes," some time ago to that.

Q. Well, then, he was elected President at that meeting? A. Yes, sir.

Q. With respect to these overdrafts, no amount was mentioned, was there? A. Not that I recall.

Q Now, if it appears from this minute book that no overdrafts were crossed off of Mr. Harrison's account until over two years after—that is, in 1905, will you still testify that overdrafts were crossed off at that original meeting two years before? A. Yes, sir.

Q. Are you sure about that now, Mrs. Harrison —you understand? A. Yes, sir.

Q. And is your recollection just as sure about that as it is about the other matters you have testified about? A. Yes, sir.

Q. Now, you were not in the habit of signing any of these minutes? A. No, sir.

Q. Had you ever been requested to sign any of them up to the time when Mr. Fish asked you to sign this minute about the increase in salary? A. Yes, sir.

Q. Did you know anything about this meeting at which the increase in salary was had? A. I had a notice of one meeting, but I do not recall what it was.

Q. Did Mr. Harrison ever tell you that there was a proposition to increase both his salary and Mr. Fish's salary? A. I believe so.

Q. Don't you remember whether he did or not? A. Yes.

Q. And did you oppose that? A. No.

Q. You did not? A. No.

Q. Now, don't you remember, Mrs. Harrison, that Mr. Dabney, the President of the company, was president at that first meeting in 1903? A. I do not recall; I don't know.

Q. And was not Mr. Coleman, the Secretary of the company, also present at that meeting? A. Well, if so, I have gotten the years confused, that is all.

Q. You won't say they were present? A. No, sir, I won't say, because the years are confusing; I don't know; I never thought I was going to be called upon.

Q. How many times did Mr. Fish tell Mr. Harrison in your presence that he would cross off overdrafts? A. I should say upon several occasions.

Q. Always at your house? A. Yes, sir; I never was at the mill.

Q. You never attended a meeting at the mill? A. Yes, I have been at the mill.

Q. But never when you were discussing these matters, or any specific amount mentioned? A. No, sir.

Q. Do you remember when a resolution was passed by the Board of Directors increasing Mr. Harrison's salary to $40.00 a week? A. Yes, sir.

Q. He was originally getting $20.00, wasn't he? A. Yes, sir.

Q. Was there any conversation had at that time about overdrafts? A. Yes, sir.

Q. And was there anything said about the amount of the overdraft? A. Well, I don't recall the amounts at all—my mind is not clear on that.

By Mr. Harrison:

Q. Was any amount mentioned? A. Yes, sir, there was an amount mentioned.

Further cross:

Q. You do remember the amount of the salary increase? A. I remember the $40.00 distinctly.

Q. Was anything said at that time about giving Mr. Harrison enough salary to live on? A. Yes, sir.

Q. Wasn't it then said that his salary would be increased from $20.00 to $40.00 a week—double—because of the high cost of living in Montclair? A. But not adequate—he was only getting $20.00 when my father was living.

Q. Isn't it a fact that when his salary was increased from $20.00 to $40.00, that Mr. Fish said that he would agree to that increase because of the high cost of living—he thought Mr. Harrison should have it—didn't he say so? A. Yes, sir.

Q. And wasn't that the first meeting at which any overdraft was ever crossed off? A. I don't know.

Q. Let me refresh your recollection—were not overdrafts talked about at that meeting, and did not Mr.——

The Court: You remember she does not state that overdrafts were crossed off—she never saw the physical act herself, as I understand it, or looked at the books, or anything of the kind; your question assumes that she knew the overdraft was crossed off itself—she does not say that.

Mr. Maxson: I do not understand—I say, were not all overdrafts talked about—that is as far as I have gone with that question.

Q. (Question read—continuing question)—And did not Mr. Harrison tell Mr. Fish that he had overdrawn in the sum of $4,500 or $4,600, and didn't

he say that these overdrafts were because of the high cost of living in Montclair, and because he could not live on $20.00 a week? A. Yes, sir.

Mr. Harrison: Objected to as a double question.

Q. And was not that the first time that overdrafts were ever talked about, Mrs. Harrison? A. I don't know.

Q. Well, if it appears from the resolution of the company that Forty-five hundred and some dollars was crossed off as an overdraft, and that at the same time Mr. Harrison's salary was increased to $40.00 a week, wouldn't you then say that that was the meeting to which you refer, if you knew that those were facts?

Mr. McCarter: Objected to as hypothetical.

Q. If you knew it was a fact that at a certain meeting, shown by resolution in the minute book, Mr. Harrison's salary was increased from $20.00 to $40.00 a week, and overdrafts of about $4,500 were crossed off, would you not then say that that was the first meeting—the meeting to which you refer —when these overdrafts were discussed? A. No, sir, I would not say so.

Q. Well, then, what causes you to say—what is your recollection that causes you to say that there was a meeting before these events—the increase in the salary, and the resolution crossing off? A. I don't know—the meetings are not clear in my mind —I don't know.

Q. Why did you refuse to sign that minute increasing Mr. Harrison's—Mr. Fish's salary? A. Why I refused to sign them?

Q. Why did you refuse? A. I was advised not to.

Q. By whom? A. By my husband's brother—Mr. Harrison.

Mr. Maxson: I object to that—that is clearly and entirely improper.

The Court: Counsel should not indicate at all to the witness.

Mr. Harrison: I tried to keep from smiling, and I had no idea of giving——

The Court: The Court will accept counsel's apology under the circumstances.

(J. Henry Harrison, Esq., for the defendants, is the gentleman alluded to as having offended in some way which the stenographer did not notice.)

Q. Did Mr. Harrison also advise you not to sign the other resolution that you refused to sign? A. Yes, sir.

Q. I mean Mr. Harrison,—your husband's brother? A. Yes, sir.

Q. And did he tell you why he did not want you to sign them?

Mr. Harrison: Objected to as hearsay.

Q. Now, did you know about the expenditures generally, that were made by Mr. Harrison out of the treasury of the Harrison Milling Company—did you know about the financial affairs of the Harrison Milling Company? A. In a general way, probably.

Q. Did you go and look at the books? A. No, sir.

Q. Did you know that Mr. Harrison paid his club dues out of the treasury of the company? A. Only what I said this morning,—that his salary was not adequate to live as he should and carry on the standing of the business.

Q. You knew, as a matter of fact, that he paid his club dues out of the company's treasury, didn't you? A. No, sir.

Q. Did you know that he bought a horse and wagon out of the treasury of the company? A. Yes, sir.

Q. Did you know that he bought a horse and carriage for his own use out of the treasury of the company? A. Well, he used his own horse that my father had given to him until it died.

Q. Did you know that he sold——

The Court: I do not see how it is going to aid you in your case for an accounting.

Mr. Maxson: She is one of the defendants.

The Court: Yes, that is true. She has testified she did not know anything about the financial affairs of the institution, any more than she got from hearsay; she never went down to the factory, except once or twice, I suppose. What she has done, has been like a lot of other people in the world—she has been a dummy director, I guess.

Q. You understand that these questions are not intended to be offensive at all. You were a director of this company, and I am asking you what you knew of the conduct of its business? A. Well, you evidently don't know the territory they covered, and how could they run the business without getting a horse and carriage, and collecting, and getting out among the trade; they had to get a horse and carriage.

Q. Well, he did get a horse and carriage? A. We have always had a horse and carriage from the time we came from Caldwell.

Q. And he had a stable down at the mill, didn't he? A. Sometimes, when it was fit to keep the horse in it.

Q. Well, he did keep the horse in it? A. Yes, sir.

Q. Did he rent stable room for horses down there?

Mr. Harrison: I think this has gone far enough. I object to this line of questions; it is improper, because it goes into the details of items of the account, and we all know that that is not a matter which can be inquired into on this preliminary hearing, and this witness has already testified she knew nothing about the business of the corporation; she knew nothing about the methods of the business management, and I think it is entirely irrelevant.

The Court: On the questions arising before this Court at the present time, the individual items of an account should not be gone into. Let me hear you, Mr. Maxson; what is the object of your inquiry now?

Mr. Maxson: I do not want to tell the wit ness what I am going to ask—my object is to show that Mrs. Harrison should have known that the moneys of the company were being improperly used; she is one of the directors of this company, and it seems to me that the evidence is clearly admissible. This is one item that I have selected to show that she knew of these improper expenditures.

The Court: You try and direct your answers to "yes" and "no," say "yes" and "no."

Q. Did not Mr. Harrison rent part of the stable to someone else to keep horses? A. The coal yard —Mr. Devaney—he rented the stable to Mr. Devaney.

The Court: How is this competent?

Mr. Maxson: It is part of the company's property.

The Court: It is not competent testimony.

Mr. Maxson: If your Honor rules it out—I am offering it to show that this witness——

The Court: I want to give you as much license as I can give you.

Q. Did or did not you know that Mr. Harrison rented part of the stable belonging to the Harrison Milling Company, the defendant, to Mr. Devaney, the coal man, to keep his horse, while at the same time he was keeping his horse in a livery stable and charging the cost up to the company—did you know that? A. Yes, sir, but they had to rent stable room to him when they rented the coal yard to Mr. Devaney; they rented part of the property to Mr. Devaney, and they had to allow him stable room.

Q. Do you know how much he got for the stable room? A. No, sir.

Mr. Harrison: We repeat our objection.

The Court: I think it is only prolonging the case unnecessarily.

Q. Now, isn't it a fact that Mr. Harrison got less for the stable, for the whole stable of the Harrison Milling Company than it cost him to keep his horse in a livery stable?

Mr. Harrison: Objected to on the ground that it is incompetent and irrelevant, and further, that it is improper, because, at this hearing the items of an account may not be inquired into.

The Court: I think this is incompetent; it is objectionable.

Mr. Maxson: I think both counsel are laboring under a misapprehension about the law; it has been held in a number of cases in this State, that the Court may determine this account, if it sees fit, on the original hearing.

The Court: But we have not gone out with that premise; we have not started out on that basis. I rule that question out. The evidence, as I stated at the start of the case, would be taken upon this phase of the litigation, as to whether an accounting could be had or not. Was not that what I said at the opening?

Q. Mrs. Harrison, you refused to sign that salary resolution which gave Mr. Fish the same salary that Mr. Harrison got? A. Yes.

Q. Were you opposed to Mr Harrison getting it? A. No, sir.

Q. At that time, was not Mr. Fish out there in active participation in the affairs of the company? A. He was out there.

Q. Wasn't he down at the mill? A. He may have been at the mill—he did not do anything.

Q. Were you down at the mill? A. Occasionally.

Q. How often were you there? A. Three or four times, probably.

Q. Over what period? A. I don't know; I frequently walked down there.

Q. And over what period were you there three or four times? A. I don't know.

Q. How many times were you there between the time Mr. Fish bought his stock in 1903, and the time when you stopped him from further participation in the affairs of the company? A. Why, I could not say how many times; I frequently went down to the mill, and if I were out for a walk, I

might stop there; I have no idea what number of times.

Q. Did you attend the annual meetings at the mill? A. Yes, sir.

Q. All the annual meetings? A. Yes, sir.

Q. Did you attend the annual meeting in 1903, September 22nd? A I don't know.

Q. Did you know a meeting was held at the mill on that day? A. I guess I was always informed of the meetings, whether I was there or not.

Q. Is not that the same day that you say a meeting was held at your house? A. It may have been at our house instead of at the mill—I say I am not sure of dates.

Q. You will say, though, that you attended no meeting at the mill on that day? A. I don't know.

Q. Do you know of any meeting at the mill that you ever did attend? A. Yes, sir.

Q. When? A. Once when I was asked to sign that book.

Q. Will you point out the minute in the book here of that meeting? A. I think this was the one.

Mr. Harrison: Just read them over, and see if you can refresh your memory from that—it is hardly proper for you to refresh your memory from that, but still we have no objection.

A. I know very little about the book.

Q. I show you a minute in the minute book, complainant's "Exhibit C1," dated "Montclair, N. J., November 18, 1908," and ask you whether you ever saw that minute?

Mr. Harrison: That was gone into, if that is the minute referring to the Forty-five hundred and odd dollars overdraft.

The Court: I will permit the question.

A. You showed me that before.

Q. Read it, please. A. I see it.

By the Court:

Q. Can you read it? A. Yes, sir.

Q. Do you recall that minute? A. I think so.

Further cross:

Q. And there is a resolution in that minute which I will read: "Now, on motion of Mr. F. K. Fish, unanimously passed, whereas, payments to amounts of $4,552.63, as more fully appears from an open account in the name of A. Gould Harrison, have been made by the directors of the Harrison Milling Company to the said A. Gould Harrison as and for compensation for special works and services as manager of the said company; and whereas, these payments have been made at the rate of $760.00 per year since the incorporation of said company, in accordance with the contract with said directors: Therefore, be it resolved, that such payments made as above be ratified and confirmed and charged to the general salary account of the Harrison Milling Company, and that the salary of the said A. Gould Harrison be at the rate of $40.00 per week from December 1, 1905, to August 1, 1906." Now, Mr. Fish offered that resolution, didn't he? A. I don't know.

Q. Did not Mr. Fish himself offer the resolution to cross off the $4,552.63 of overdraft? A. I don't remember the amount.

Q. Well, he did offer a resolution to cross off something like four thousand dollars of overdrafts, didn't he? A. Yes, sir.

Q. And was it offered in that language, as it appears in the book? A. I don't know; I could not remember such things.

Evelyn L. Harrison—By Defendants—Cross

Q. Now, you attended a meeting in July, 1910, at the Harrison Milling Company's office, at which who were present?

Mr. Harrison: Objected to as not being proper cross examination; she made no reference on her direct examination to that—to the meeting of July, 1910, and we expect to prove that in the proper way, by the secretary of the meeting; it has not been injected into this before.

The Court: The objection is overruled.

Q. Were you present at the meeting? A. Yes, sir.

Q. And who were present?

Mr. Harrison: Objected to as incompetent and immaterial, and not being proper cross examination; there has been nothing developed on direct examination relative to this minute; we intend to put it in at the proper time; but this has absolutely no bearing at all; Mr. Maxson should know it is not proper cross examination.

Mr. McCarter: The whole purport of her evidence was to show that she recalled certain informal conversations with regard to wiping off of overdrafts, and also about the purchase of the stock. Now, here is a meeting that occurred after what may be called the declaration of war, when these people had parted, and a record was being made, apparently, which our friend on the other side seems to think is of some use to him. This witness was there.

The Court: After they had parted company entirely.

Mr. McCarter: (Continues argument.)

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Mr. Maxson: I admit it is proper cross examination.

The Court: I shall allow the question, subject to the objection.

By the Court:

Q. Do you remember who were present at the meeting? A. I think at that meeting there was Mr. Harrison, Mr. James Henry Harrison, Mr. Knowles—one of Mr. Fish's former attorneys—Mr. Harrison and myself, and Mr. Fish.

Further cross:

Q. Do you recall what happened at that meeting?

The Court: Don't the minutes show that—what did happen there?

Q. I mean, generally, what happened, or were any resolutions passed with respect to increase of salaries or overdrafts, or any such things as that?

Mr. Harrison: There are two meetings, held on that date; one is a stockholders' meeting and the other is a directors' meeting; I think Mr. Maxson should refer to the one or the other.

Q. I did not know that—I direct your attention first——

The Court: Do you think this is aiding you on a bill for an accounting? If this witness upon the witness stand has been derelict in her duty, neglectful of her duty as a director, you know there is a remedy outside.

Mr. Maxson: This being a court of equity, I suppose the Court will dispose of the whole matter.

The Court: Not on this question at issue.

Mr. McCarter: This is a pure question as to whether or not Gould Harrison is indebted to the company; this is a suit brought by a stockholder of the company because A. Gould Harrison is said to control the board through his influence with his wife. It is claimed by your bill that Mr. A. Gould Harrison owes the company some money, and you are asking the Court to so declare; you make parties to that suit Mrs. Harrison, A. Gould Harrison and the company, and that is the sole object of your bill. Now, A. Gould Harrison files an answer in which he says: "To be sure I did draw more than my salary, but that was arranged that I should do so." It was perfectly agreed that that should happen, and that your client agreed to do, and the minutes and the books of account seem to bear him out. Now, the issue is, whether the books of account have been forged, and whether the minutes are practically forgeries. In none of these matters has this lady sworn here.

Q. Do you remember whether or not, Mrs. Harrison, at one of those meetings, either of the stockholders or the directors, a resolution was passed to increase Mr. Harrison's salary to $3,000 a year—that is, the meeting in 1910—do you recall? A. Yes, I do.

Q. And did you vote for that? A. I did.

Mr. Maxson: Now, may we not reserve further cross examination until later on?

The Court: It seems to me this witness is feeling able to finish up today, if she can.

Q. At no time at any of these conferences that you spoke about was any specific sum of extra compensation agreed upon for Mr. Harrison? A. No, sir.

Q. Then, as far as you recollect, the matter was left with him as to how much extra compensation he should have? A. Yes, sir.

Q. You know, Mrs. Harrison, that Mr. Fish has not had any income from this company since he dropped drawing his salary?

Mr. Harrison: Objected to; first, on the ground that this witness has not those facts within her knowledge.

By the Court:

Q. Do you know? A. No, sir, I do not.

Further cross:

Q. Don't you know that Mr. Fish has received nothing from this company since he stopped drawing his salary, and since the break came? A. I do not.

Mr. Harrison: Objected to as irrelevant and not cross examination.

Q. Did you think he was receiving some income from the company?

Mr. Harrison: Objected to.

The Court: She says she did not know, of her own knowledge, that he was not.

By the Court:

Q. Did you think he was receiving an income from the property? A. I did not think he deserved any.

Q. That is not responsive—did you think he did get any? A. No, sir.

Further cross:

Q. You knew he did not get any? A. Yes.

Q. Did you know at the time you voted for that resolution to pass Mr. Harrison's salary, that there had been an order of the Court that no change be made in his salary?

Mr. Harrison: Objected to as immaterial.

The Court: The objection is sustained.

Mr. Samuel H. Wenk, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Harrison:

Q. Where do you live? A. Montclair, New Jersey.

Q. What is your profession? A. I am a certified public accountant.

Q. How long have you been such? A. About sixteen years.

Q. Do you hold any official position? A. Yes, sir.

Q. What is that? A. Treasurer of the Town of Montclair.

Q. How long have you been such treasurer? A. Four years and over.

Q. Did you ever make an examination of the accounts of the Harrison Milling Company? A. Yes, sir.

Q. With reference to the purchase of certain shares of stock by A. Gould Harrison? A. I did, yes, sir.

Q. When did you make that examination? A. It was in April, 1911.

Q. What did the books show with reference to that transaction?

Mr. Maxson: I object, because his attention is not directed to any specific items in the books.

The Court: The objection is sustained.

Q. I call your attention to ledger of the Harrison Milling Company, of 1906, and direct your attention to an account on page 64, headed "E. M. Beyea," and ask you what that account shows? A. That account shows——

Mr. Maxson: I object to the question, because the account speaks for itself; I object to its form also.

Mr. Harrison: That has been the main issue——

Mr. Maxson: I object to it, because the account speaks for itself; he says "What does the account show?"

By the Court:

Q. What is the account?

Mr. Maxson: I do not think that question is properly formed; the book speaks for itself. The question to the witness is: "What does the book show?" I think it is entirely objectionable, for that reason.

The Court: I will allow it.

A. The book shows, outside of the first two entries, on the debit side, it shows debits made to that account, relating to the purchase of stock of the Harrison Milling Company—disbursements. The ledger opens with an old balance of $41.68; that was the balance June 1st, 1906. On October 14th, the same year, it shows a debit of $14.00, but does not say for what specific purpose it was expended.

Mr. Maxson: I object to the witness looking at any memorandum, unless it appears how it was made, when it was made, and under what circumstances.

The Court: The objection is noted and overruled.

By Mr. McCarter:

Q. Would that paper in your pocket contain memoranda that would facilitate your finding this —A. Yes, sir.

Further direct by Mr. Harrison:

Q. When did you make your original memorandum which you have before you here?

Mr. Maxson: That is a leading question, and I object to it.

By the Court:

Q. Did you make any memoranda when you were examining the books? A. Yes, sir.

Q. Have you that memoranda? A. Yes, sir.

Q. Where is it? A. It is here.

Q. And that memoranda that you made, did you take it from the books at the time you were examining them? A. Yes, sir.

Q. And that is it in your hands? A. Yes, sir.

Q. You may refer to that to refresh your memory. A. The first entry was made February 18, 1907, Eighty Dollars debit—that was for interest and dividends—it was described——

By Mr. Maxson:

Q. Now, are you reading from the books or from the memoranda? A. (No answer).

Further direct:

Q. State to the Court to what book and to what page of the book that entry refers. A. It is the previous cash book (someone went and got the previous one for the witness). This was cash book, page 383, February 18, 1907, bonus on four shares of stock, $80.00.

By Mr. Maxson:

Q. Has that entry been referred to by the book on the record—have you stated where you found the entry you referred to in the book I am now pointing to, which has "Cash" on the top of the page? A. (No. answer).

By the Court:

Q. Cash book, page what? A. 383—February 18, 1907—on the same day there was paid to the American Hay and Grain Company $160.00.

Mr. Maxson: I move that that be struck out.
The Court: Strike it out.

A. On the 19th, I. M. Beyea, account stock 15 shares, $462.68; E. M. Beyea, stock and interest on bonds, interest and dividends on bonds of 1905, I think that is $90.00, the total of which is carried to the ledger, $552.68; those two sums added together, make that sum.

By the Court:

Q. Now, trace out the othem item— A. The next item is on the 21st, on the same folio, on the 21st of February, "I. M. Beyea, $337.32"; and $1,000 right underneath that, which is carried to the ledger as $1,337.32; the total of the items that I have called out amounts to $2,025.68.

Further direct:

Q. Is that total shown on the ledger? A. That is the total shown on the ledger—on the credit side of the cash book, under date February 21, 1907, Cash book, folio 382, "I. M. Beyea, 15 shares of stock to A. G. H. on account ticket on loan, $1,500."

Q. Is that entry to which you have just referred, carried into the ledger account of I. M. Beyea? A. Yes, sir.

Q. And does the ledger folio show the paper paging of the cash book to which you have just referred? A. Yes, sir.

Mr. Maxson: Have these books been marked for identification?

The Witness: These books have been referred to before.

Mr. Maxson: The orderly way to mark these books is when the witness is referring to them; now, I ask that the books be marked for identification.

Cash book, Harrison Milling Company, from September, 1904, to March, 1907, is marked "Exhibit D-A-1 for identification."

Mr. Harrison: I will offer that book in evidence.

Marked "Exhibit D-A-1."

Mr. Harrison: And I offer journal of the Harrison Milling Company from August, 1906, to January 31, 1908.

Marked "Exhibit D-A-2."

I also offer ledger of the corporation, headed from June, 1906, to March, 1908.

Marked "Exhibit D-A-3."

The Witness: Now, we are still on the credit side of the ledger; in the journal, under date of August 1st, 1907, there appears an entry to

the credit of I. M. Beyea, and to the debit of merchandise, for expenses and premium on stock, $525.68, which was carried to the ledger, with the proper reference to the journal folio. The total of these credits amount to $2,025.68; that entry represented the difference between par value of the stock and the total expenditures.

Q. Explain to the Court the method by which that purchase of stock was taken care of on the books. A. (No answer.)

By Mr. McCarter:

Q. Interpret the entries—how was it dealt with in the book—in other words, interpret the figures and entries you have just been giving us. A. (No answer).

By the Court:

Q. Where did it first appear in the books, for instance? A. That signifies the cost to purchase this stock, $552.68, on February 18; and on the 21st, $1,337.32.

Q. What does that total? A. That totals $1,890.00; the previous entries represented bonus and interest.

Q. What do the books show as to the amount that this stock cost? A. The books show that the stock cost $2,025.68—$1,500 worth of stock.

Q. Does that mean that Mrs. Beyea got all of that money for that? A. She got value for that, yes, sir.

Mr. Maxson: How does this witness know that?

Further direct:

Q. I call your attention to the first two items of $41.68, and $14.00, and ask you if those two items are represented in the stock purchase? A. They were not originally included, but they were debits in the account before the purchase of stock commenced; they were included in the final entry, disposing of the difference between the par value of the stock and the total of the account as charged to E. M. Beyea.

Q. I call your attention to the entry in the cash book, folio 382, "February 21, 1907, Ida M. Beyea, 15 shares of stock to A. G. H., account ticket on loan, $1,500," and ask you how you explain that entry? A. I explain that entry in this way—it had been the custom of the bookkeeper, as I was informed——

Mr. Maxson: I object, and ask that that be stricken out.

The Court: Strike it out—cut out "as I was informed."

By the Court:

Q. State what you know about the entry of that item. A. I found that on September 18, 1906, A. G. Harrison issued a check in favor of the Harrison Milling Company for $2,000.

By Mr. Maxson:

Q. Did you find that in the books of the company? A. Yes, sir, I did, in one of the books of the company.

Mr. Maxson: I object to it, unless the witness opens the book and shows us the entry that he is referring to.

The Witness: I found it in the stub of the check book.

Further direct:

Q. Did you ever see that check? A. Yes, sir.

Q. When did you first come across that check? A. Why, in my examination that I referred to in the beginning of my testimony.

Q. Now, I ask you what that entry—how that entry to which I have just referred on folio 382, is explained—I direct your attention to the entry to which you have testified, on page—on folio 382—on "Exhibit D-A-1," and ask you how you explain the entry? A. That entry says, "15 shares of stock to A. G. H., account ticket on loan"; that was *prima facie* evidence that there was a ticket in the cash drawer, representing a loan.

Mr. Maxson: Will your Honor rule on that? I don't want that on the record.

The Court: Strike that out, that answer.

Q. (Question read). A. That entry credits I. M. Beyea for the receipt from her of 15 shares of stock, which were given to A. G. Harrison, and they were given to him on account of a ticket for a loan; it says so.

Mr. Maxson: I object to that, and ask that it be struck out.

By the Court:

Q. Did you see the ticket? A. No, sir.

Mr. Maxson: I move it be stricken out.

The Court: It is objected to. Strike that part out.

Further direct:

Q. Do you know anything about the custom—do you know who kept those books? A. Yes, sir.

Q. Who? A. A man named Coleman.

Q. Is he now alive? A. No, sir, he is dead.

Q. Do you know when he died? A. Well, not exactly—I think he died in 1907.

Q. Do you know whose handwriting those books are in? A. That looks to me like his handwriting.

Q. Do you know what his custom was in the matter of these so-called tickets?

Mr. Maxson: I move that the previous answer be stricken out—"that looks like his handwriting."

Q. Do you know whether or not that is his handwriting? A. I did not see him write it.

Q. Are you familiar with his handwriting? A. Yes, sir.

Q. You have seen it a number of times? A. Yes, sir.

Q. In your opinion, is that entry in Coleman's handwriting? A. Yes, sir.

Mr. Maxson: I move it be stricken out, on the ground that that does not qualify him.

The Court: The objection is overruled.

The Witness: He was the bookkeeper at that period.

Q. Do you know what Coleman's custom was in the matter of tickets—the keeping of tickets? A. I know, yes, sir.

Q. What was that custom?

Mr. Maxson: Objected to.

The Court: The objection is overruled.

The Witness: He had the custom of carry-

ing in his cash drawer, tickets—he had the custom of carrying in his cash drawer, tickets of receipts and disbursements.

Q. What would these tickets represent?

Mr. Maxson: Objected to—the same objection—the tickets are the best evidence, unless it is shown that they are lost.

Q. Do you know what those tickets represented?

Mr. Maxson: Objected to.

The Court: The objection will be noted and overruled.

A. The tickets would represent receipts of cash from anyone, and for payments.

Mr. Maxson: I move that this be stricken out, because the tickets in themselves are the best evidence, and there is nothing here to show that this witness has ever seen them or known what the contents are.

By the Court:

Q. Didn't you see any of these tickets when you were making this examination? A. These tickets had evidently been consumed, because they were no longer in existence. May I explain the custom in regard to the tickets?

Mr. Maxson: I move to strike out all the testimony with respect to these tickets.

By Mr. McCarter:

Q. Did you ever see any tickets? A. Yes, sir; I have seen tickets.

Further direct:

Q. When these tickets were in the cash drawer, what did they represent?

Mr. Maxson: I object; it is a question whether they represented cash or whether they represented something else. There is no basis for this testimony.

The Court: He is going to testify to what these tickets represented.

Mr. Maxson: It has not been shown that he knows.

The Court: I will allow the question—what did the tickets say?

A. The tickets represented for money received from parties, and on the ticket debts were made when payments were made to the same parties, or for accounts of those parties, on account of the money originally received.

By Mr. McCarter:

Q. May I interrupt here—now, let us have this explained a little bit—now, a ticket was put in the safe or drawer—in the cash drawer; now, suppose that ticket called for $1,200—now, that meant originally, as put in there, what? A. That $1,200 had been received from a certain party, and entered on the ticket, and the amount was not entered on the cash book.

Q. Now, as you understand the custom, after that memorandum or check had been put in the safe drawer—cash drawer—representing the amount of money received, would any further notice be put upon that particular card or piece of paper, when anything else was done, and if so, what?

Mr. Maxson: I make the same objection—that this witness is not competent to testify, and on the further ground, that it is not shown that he knows about these tickets.

A. If any money was withdrawn from the company on account of the tickets, it would be endorsed on the ticket against the original receipt——

Mr. Maxson: Your Honor will take the same objection.

The Court: Very well; that is understood.

Q. When, in the history of this transaction of which you have given us a sample, when would any knowledge appear in the books, either of the original sum, or of any of these small sums that you have just been referring to—when would it be transferred to the books? A. It would be transferred to the books when the ticket had been exhausted.

Q. Now, in view of this custom which you have thus explained, how do you interpret the phrase on page 382 of this cash book, "Ida M. Beyea, 15 shares stock to A. G. H., account ticket on loan"?

Mr. Maxson: Objected to, because this witness is not shown to know anything about this custom except from hearsay, and he is not competent to testify.

The Court: The objection is overruled.

A. There must have been a ticket in existence from which this amount was deducted when this entry was made.

Mr. Maxson: I move to strike that answer out, because it is not shown that this witness knows that any such ticket was in existence.

The Court: We shall have to adjourn now. I understand that this can be completed in two more days. I will let you know when I can take this matter up again, and I will try to make you an earlier date than March.

Adjourned to a day to be fixed.

THIRD DAY.

IN CHANCERY OF NEW JERSEY,

Between

FREDERICK K. FISH, Complainant, *and* A. GOULD HARRISON and the HARRISON MILLING COMPANY, Defendants.	On Bill, etc., Testimony.

Transcript of testimony taken in the above-entitled cause, before Hon. VIVIAN M. LEWIS, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on the nineteenth day of March, nineteen hundred and thirteen.

Appearances:

EDWARD MAXSON, Esq., for the Complainant.

CHURCH & HARRISON, Esqs., represented by ROBERT H. MCCARTER, Esq., and J. HENRY HARRISON, Esq., for the Defendants.

SAMUEL H. WENK, recalled.

Direct examination by Mr. Harrison:

Q. I wish to call your attention to testimony on line 11 of page 198.

Counsel consents that the figures "$1,000" on line 11 of page 198, be changed to "$14.00," and the same be substituted therefor.

Counsel consents that on page 199, line 12, the word "dollars" be inserted after the word "eighty."

Q. I call your attention, Mr. Wenk, to your testimony on page 208, where you are purported to have made this reply to a question asked by counsel for the defendant: "The tickets represented for money received from parties, and on these tickets debts were made when payments were made to the same parties by other accounts of those parties on account of the money originally received," and I ask you if that is the reply which you intended to make to that question? A. The word "for" after "represented" should be eliminated, so that it will read: "The tickets represented money received," and on the next line, after the word "tickets" the letters "d-e-b-t-s" should read "debits"; and in the next line the word "accounts" should have the final s stricken from it, so that it will read "account."

Cross examination by Mr. Maxson:

Q. When were you first engaged as accountant by the Harrison Milling Company? A. In 1910.

Q. On what date? A. In July.

Q. And for what specific purpose? A. For the purpose of ascertaining the assets and liabilities on June 30th of that year.

Q. And what account did you examine? A. I examined all the accounts necessary to enable me to make that statement.

Q. And did you make the statement? A. Yes, sir.

Q. In writing? A. Yes, sir, in typewritten form.

Q. Where is it? A. I presume those statements are filed in the previous proceedings.

By the Court:

Q. Do you know where it is? A. I do not know, no, sir.

Mr. Harrison: They are now on file with the Clerk in Chancery.

Q. Whom did you turn them over to? A. To Mr. A. Gould Harrison.

(Mr. A. Gould Harrison said: "I gave them to counsel.")

Further cross:

Q. And was it during this examination that you refer to for the purpose of making up this statement, that you examined the personal account of Mr. A. Gould Harrison? A. Yes, sir.

Q. And that was done at his direction? A. Not specifically at his direction; I examined everything that I thought was necessary to do my work.

By the Court:

Q. What were your directions in regard to the examination? A. My directions were to ascertain the assets and liabilities of the company at June 30, 1910.

Further cross:

Q. And also, as I understand you, to look into the account of A. Gould Harrison personally? A. I looked into everything as I thought was necessary to enable me to make such a statement.

Q. Did you examine A. Gould Harrison's personal account? A. Yes, sir, at that and subsequent times.

Q. When again did you make an examination of

it? A. Well, I think the next time was in 1911, perhaps April; I cannot recall just the exact date.

Q. And was your attention directed to any certain part of his personal account, or did you examine all of it? A. I examined certain parts of it.

Q. What parts? A. Well, I examined to see where he was credited with that $2,000 that was deposited in the Bank of Montclair, which did not appear on the cash book.

Q. And you found the credit, did you? A. No, sir, I did not, he was not credited with it.

Q. Previous to this engagement in 1910 to make up this statement, had you ever had antyhing to do with the books of the Harrison Milling Company? A. No, sir.

Q. You testified on your direct examination, with regard to these fifteen shares of stock, in reply to a question which you were asked: "It would be transferred on the books of the company, when the ticket had been"— No; this is the question: "Now, in view of this custom which you have thus explained, how do you interpret the phrase on page 382 of this cash book?" Have you the cash-book there? A. Yes, sir.

Q. The question goes on: "How do you interpret the phrase on page 382 of this cash book, 'Jas. Moore, 15 shares of stock to A. G. H., ticket on loan;'" do you see that entry? A. Yes, sir.

Q. And you did interpret that, did you? A. Yes, sir.

Q. Did you examine it? A. Yes, sir.

Q. And interpret it? A. Yes, sir, I did.

Q. And did you interpret it from your examination of this book, entirely— A. Yes, sir.

Q. Without having had anyone tell you anything about it at all? A. I interpreted it as an accountant.

Q. And not because of anything that anybody told you? A. No, sir.

Q. You made inquiries about it? A. Yes, sir, and my interpretation was confirmed by inquiries that I did make.

Mr. Maxson: I move that that be stricken out.

The Court: I think it is a very proper thing; he said he examined this as an accountant; he interprets his conclusion from those investigations and from an examination of the account; it is a very proper answer.

Mr. Maxson: I wish to make my objection on the ground that it is not disclosed from what source he received his information, and that it is not responsive to the question.

The Court: I shall have to allow that answer to stand.

Q. You are quite sure you had had no connection with the Harrison Milling Company before 1910? A. Not the slightest.

Q. When was this entry made in the book? A. This was made on the 21st day of February, 1907.

Q. Three years before your examination? A. Yes, sir.

Q. Now, you had seen some of these tickets, hadn't you? A. I have seen tickets.

Q. I mean, you had seen some of the Harrison Milling Company's tickets? A. Yes, sir.

Q. When had you seen them? A. I saw them originally when Mr. Coleman was still alive; I used to pass there, and he had a very interesting dog that I was acquainted with——

Q. Then you had had something to do with the Harrison Milling Company— A. I had nothing to do with the accounts at all.

Q. But you did see the tickets? A. I did, in passing the office; I would chat with Mr. Coleman and then he would tell me about tickets——

Mr. Maxson: I move that be stricken out, what Mr. Coleman told you—I have asked you whether you ever saw any of the tickets or not.

A. I did not examine any tickets, but I saw the tickets.

Q. Where did you see them? A. In his hands, when we were talking; he explained to me what use he made of the tickets.

Q. In response to what sort of an inquiry? A. I don't know exactly, but when accountants get together they generally discuss accountant matters; one man will say, "I do things this way," and another one will say, "I do them that way."

Q. You never, personally, made an examination of any one of these tickets, did you? A. No, sir.

Q. And yet, in your direct examination, you have described the tickets? A. I know the *modus operandi* of the use of those tickets.

Q. You only know it from what Mr. Coleman told you? A. Not only from that, but from the practice that I have discovered in other offices.

Q. I mean, with respect to these particular tickets? A. Yes, sir.

Mr. Maxson: Now, I renew my motion to strike out all the testimony with respect to these tickets, it being based on the hearsay evidence of what somebody told this witness, and not from his personal examination of the tickets.

The Court: He said he saw the tickets.

Mr. Maxson: Yes, but this witness is stating what these tickets represented.

The Court: No, he said he saw these tickets, as I understand.

Q. Did you see these tickets? A. Yes, sir, I saw tickets, but I did not know what they contained.

Q. You did not examine them? A. No, sir.

The Court: I will allow the testimony to stand for the present, subject to your objection.

Q. Now, there is nothing on the books of the company to show any credit to Mr. A. G. Harrison for $2,000 loaned the company? A. It does not show any credit to him, no.

Redirect examination by Mr. Harrison:

Q. When you referred in your answer to the last question to the books of the company, do you include in the term the check book and the stub? A. I mean Mr. Harrison's account, not credited to his individual account.

Q. Is there anything on the stub of the check book to indicate any such poyment? A. The stub of the check book indicates that a check of his was deposited to the credit of the company in the Bank of Montclair.

Q. I call your attention to an entry in the middle of the page, marked with the first blue marker, and ask you what, if anything, is shown there with reference to a deposit? A. On September 19——

Mr. Maxson: That is so cumulative—I object to it.

Mr. McCarter: It is already in.

Mr. Harrison: I offer the book in evidence now.

The Court: The book will be received in evidence.

Mr. Maxson: I object to it; it is not prop-

erly offered at this time; I object to it on the ground that it is out of the order of proof and not properly proved.

Recross examination by Mr. Maxson:

Q. Mr. Wenk, you have now referred to an entry in the book here; you did not find any entry corresponding to that in any of the the other books of the company? A. I did not find it in the cash book, or in any other book of the company.

Q. You looked for it, didn't you? A. Yes, sir.

Q. Did you balance the books up? A. Well, such accounts as were necessary.

Q. Was this one of the accounts necessary to be balanced? A. Yes, sir; and it was not in that account.

Q. And you were able to reach a balance without respect to this $2,000? A. I do not mean to say "reached a balance;" I mean to say the balance of his account did not embrace any balance of his account—I mean, did not embrace the check for $2,000 which he issued in favor of the company, and which was deposited to the credit of the company in the Bank of Montclair.

Mr. Maxson: I move that that all be stricken out as not responsive.

The Court: Strike it out.

A. (Continued.) That was not included in the balance.

Q. Then, the books of the company balanced without any consideration of these two thousand dollars? A. I did not balance the books at that particular time.

Q. But you balanced them? A. I balanced them at the end of the period that I spoke of.

Q. When you say "balanced," what do you mean?

A. I mean to say that the books were in balance on June 30, 1910.

By Mr. Harrison:

Q. Now, Mr. Maxson sought to give the impression from your examination, that the books were perfectly consistent and evened up, exclusive of the $2,000? A. The cash book would not have been in balance with the bank account at the date that check was issued, for the reason that the check was not entered on the cash book.

Further recross:

Q. Well, but might not the cash of the company have balanced even though that check was deposited —might the money not have been drawn out of the bank? A. It could not be in balance because there was two thousand dollars put in the bank that was not entered on the cash book.

Q. But if that $2,000 went to the credit of the Harrison Milling Company, it would have to go on the books of the company, wouldn't it, in order to balance them? A. It was entered on the stub; it was not entered on the cash book; and this entry here that refers to a ticket is prima facie evidence that instead of having that amount on the cash book, it was entered on a ticket.

Mr. Maxson: I move that that be stricken out.

The Witness: I say that as an expert accountant.

Q. If that $2,000 had been deposited in the bank to the credit of the Harrison Milling Company, it must go on the cash book to the credit of the person who makes the deposit, otherwise the books will not balance, will they? A. It should go on the cash book, yes, sir.

Q. Will the books balance, if it does not go on the cash book? A. They will, if you take them together.

Q. But you know nothing about the ticket? A. Yes, but I do.

Q. You never saw the ticket? A. No, sir; but I may have a right to make an inference as an accountant.

Q. If that two thousand were deposited in the bank, and not shown in any way on the books of the company, on the cash book or ledger, could they be balanced? A. Not from the books.

Mr. Bert B. Tichenor, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Harrison:

Q. Mr. Tichenor, you are now the bookkeeper of the Harrison Milling Company at its principal office in Montclair, New Jersey? A. Yes, sir.

Q. How long have you been such bookkeeper? A. A little over five years.

Q. Who has been in charge of the plant at Montclair since you were there? A. Mr. A. Gould Harrison.

Q. What has been the general nature of his work there? A. He has entire charge of the buying and the running of the business together.

Q. Do you know Frederick K. Fish, the complainant in this cause? A. Yes, sir.

Q. How long have you known him? A. From the spring of 1908, I think it was; that was the first time I met him.

Q. Can you fix the time when you went to the office of the company as bookkeeper? A. Yes, sir.

Q. What is that time? A. December 31, 1907.

Q. And in what portion of the spring of 1908 did you first meet Mr. Fish—did I understand you correctly that you had first met Mr. Frederick K. Fish in the spring of 1908? A. Yes, sir.

Q. Now, I ask you in what part of the spring of 1908, did you meet him? A. I think along in February or March.

Q. What was the occasion of that meeting? A. I think it was simply a visit of his to the plant—a visit of Mr. Fish's to the plant, as far as I can remember.

Q. How long was Mr. Fish out at the plant? A. Perhaps two or three hours, a couple of hours.

Q. And what did he do during the time he was there? A. Why, he went over the mill and looked over the books in the office; talked with Mr. Harrison, and also with me.

By the Court:

Q. Talked to you? A. Yes, sir.

Further direct:

Q. And what portion of the books were gone over at that time? A. The sales book, that is, the day book, and also looked over the cash book.

Q. Did you make any examination of the safe or its contents? A. I don't know that I did—no, I won't say for sure.

Q. When did you next see Mr. Fish? A. I think the next time was a meeting in the fall of 1908; I don't think he was out before that.

Q. And who was present at that meeting? A. Mr. Fish, Mr. A. Gould Harrison and Mrs. Evelyn L. Harrison.

Q. Did you attend the meeting itself? A. No, sir.

Q. Where was it held? A. In the office.

Q. You were working in the office while the meeting was being held? A. Yes, sir.

Q. Can you fix the time in the fall of 1908 that this meeting was held? A. I think it was in the first part of September.

Q. When did you next see Mr. Fish? A. Well, I could not fix the exact time; he was out several times during the following year.

Q. He came up frequently during the following year? A. No special time.

Q. Did you afterwards talk to him when he came up there? A. He usually talked to me and asked me questions.

Q. What did these general talks with you cover? A. Business, and how the business was going on; he looked at the books and examined them.

Q. Did you ever make him any statements? A. Not at that time—afterwards.

Q. When did you begin to give him statements? A. Shortly after he came out to Montclair.

Q. When did he come to Montclair? A. I think the first part of October, 1909.

Q. And do you mean by his coming, that he came there permanently? A. He did, yes, sir.

Q. Stayed out there? A. Yes, sir.

Q. What sort of statements did you give him after he came there permanently? A. Detailed statements of A. Gould Harrison's account.

Q. Anything else? A. I don't think so; no, sir.

Q. He seemed to be chiefly concerned with the A. G. Harrison account? A. Yes, sir.

Mr. Maxson: Objected to.

The Court: Strike that out.

Q. Did he ever look over the account as it appears in the books? A. Yes, sir.

Q. What did he say on such occasions? A. He always seemed to approve of it.

Mr. Maxson: I move that be stricken out as the witness's conclusion.

The Court: The form of it may be changed.

By the Court:

Q. What did he say about it? A. He said it was all right.

Further direct:

Q. How many times did he say that, or words to that effect? A. Several times during that fall; I could not say just how many.

Q. When you came to the office did you see any slips in the cash drawer? A. Yes, sir.

Q. What was the nature of these slips? A. There were all kinds of slips which were carried as cash items against the different people.

Q. Mention some of the people. A. Mr. A. Gould Harrison, Mr. F. K. Fish; also, I think there was an old slip against Mr. Coleman in there.

Q. Who was Mr. Coleman? A. The former bookkeeper.

Q. Is he now living? A. No, sir.

Q. When did he die? A. Just before Christmas of 1907, about a week before I went there.

Q. Will you explain in detail the practice, the slip practice of the Harrison Milling Company? A. A great many times Mr. Harrison would draw a certain amount of money, and instead of charging it up against his account, we would simply enter it on a slip and put it in the cash drawer and carry it as cash. Mr. Fish's slip at that time was receiving as a commission, and I understood it, $100 a month, and when his check was sent to him

each month, or about each month, it was put on the cash slip and carried in the cash drawer as a cash item; at the end of the year the whole $1,200 was charged off in one item, and taken out of the cash drawer and the slips destroyed; Mr. Harrison's slips were carried until such time as he paid them or were charged against his account.

Q. Upon what sort of paper were these slips carried? A. Just ordinary scrap paper.

Q. I show you a slip headed, "Order for delivery, Harrison Milling Company, 10-25, 1909," and ask you if you have ever seen that paper before? A. I have.

Q. When did you first see it? A. I made it myself.

Q. When? A. On the 25th of October, 1909.

Q. Where was this slip found? A. In the cash drawer of the company.

Q. Is this a fair sample of the slips that were part of the practice to which you have just referred?

Mr. Maxson: Oh, I object to the form of the question—"is this a fair sample."

By the Court:

Q. Is this similar? A. Yes, sir.

The Court: Now, show it to Mr. Maxson.

Mr. Harrison: I am going to show it to him before I offer it.

(Mr. Harrison shows it to Mr. Maxson).

Mr. Harrison: I offer the slip in evidence.

The Court: All right.

Marked "Exhibit D-A-1."

Further direct:

Q. Do you know Mr. Charles Nasmyth? A. Yes, sir.

Q. When did you first see him? A. I cannot fix the time. He came to the office of the company two years ago.

Q. How long was he there at that time? A. Two or three weeks, I think—not all the time——

Q. Off and on during a period of two or three weeks? A. Yes, sir.

Q. Did you have any conversations with him? A. Yes, sir.

Q. Concerning what? A. Well, just ordinary conversation mostly.

By the Court:

Q. Did you have any conversation concerning the account with him? A. Some, yes.

Further direct:

Q. Did you have any conversation with him concerning this slip practice of the company? A. That I cannot say.

Q. Did you show him any slips? A. He had access to the books and everything in connection with the books.

Q. Did he have the free run of the office during this time? A. Yes, sir.

Q. And did you show him everything that he asked for, that you could show him? A. Yes, sir.

Q. During this examination was Mr. Nasmyth's attention called to the stub of the check-book of the Harrison Milling Company, marked "Exhibit D 1 for identification," which I now show you? A. I don't know.

Q. Did you have any conversation with Mr. Nasmyth concerning an alleged payment of $2,000 by A. Gould Harrison to the Harrison Milling Company? A. Yes, sir.

Q. What was that conversation? A. He asked

me if I could give him any information in regard to it.

Q. What did you say to him? A. I told him I could not; that it was before my time.

Q. Did you make any reference to a check given by A. Gould Harrison to the company for $2,000? A. I don't know whether that came up or not.

Q. I show you "Exhibit C 1" for the complainant, being the minute book of the corporation, and I ask you when you first saw that book and where? 20 A. When I first went to work for the company and in the safe of the company.

Q. In what portion of the office was the safe of the company located? A. It is on the north side of the office, just behind the desk.

Q. And where did you first observe the minute book in the safe? A. In the bottom part of the safe, standing along with the check-book.

Q. Was it in full view from the outside when the safe doors were open? A. Yes, sir.

Q. How long did it remain there? A. It remained there until the next meeting.

30 Q. And when was that? A. That was in September of 1908.

Q. Did you ever see that minute-book in Mr. Fish's possession? A. Yes, sir.

Q. When did you first see it in his possession? A. After he came to Montclair.

Q. What year? A. 1909.

Q. Where was the minute-book at the meeting to which you have just referred, in the fall of 1908? A. It was opened at the meeting.

Q. You saw the book? A. Yes, sir.

Q. Being used at the meeting? A. Yes, sir.

40 Q. Mr. Fish was present at that meeting? A. Yes, sir.

Q. How soon after Mr. Fish came to Montclair

did you see him with the minute-book in his hand? A. Probably two or three months; I cannot fix the time.

Q. And how long did he have the minute-book? A. That I don't know.

Q. Did he take it from the office? A. Yes, sir.

Q. Did he have it in his possession more than once? A. I don't know as to that.

Q. Have you seen him looking over the book more than once? A. Yes, sir.

Q. How many times can you say? A. Several times—three or four times in the office.

Q. I call your attention to a minute at the top of page 31 of the minute-book, headed "Montclair, N. J., October 21, 1909," and I ask you in whose handwriting that minute is? A. In mine.

Q. At whose direction and under what circumstances did you write that minute? A. Mr. Fish asked me to write it in from a note that he gave me——

Q. What note did he give you? A. He gave me notes just as it stands here, and asked me to copy it into this minute-book.

Q. Was he ever there when you wrote it in? A. He came and handed me the book.

Q. And what date was that minute put in the book, if you know? A. I don't know.

Q. I show you check of the Harrison Milling Company to the order of A. Gould Harrison, No. 3940, November 6, 1909, and I ask you in whose handwriting the body of the check is? A. In mine.

Q. Do you remember the circumstances of the drawing of that check by you? A. Yes, sir.

Q. What were those circumstances? A. Mr. Fish happened to be standing by Mr. Harrison's desk, or looking at it, and noticed quite a large quantity of small bills, of personal bills of Mr. Harrison's, and

he said, "Why don't you pay these bills and get them out of the way?" and Mr. Harrison said, "I have not got the money"; and Mr. Fish said, "Well, draw a check of the company and I will sign it, and pay them up and get them out of the way and charge it up to yourself."

Q. Do you know the signatures on that check? A. Yes, sir.

Q. Whose signatures are they? A. F. K. Fish, President, and A. Gould Harrison, as Treasurer.

20 Mr. Harrison: I offer the check.

Marked "Exhibit D-A-2."

Q. Turn to the book of the company and show where the entry of that charge, the A. Gould Harrison account, is made? A. I find the entry on page 339 of the cash book.

Q. Under what date? A. November 5th; A. G. Harrison.

Q. For how much? A. A hundred and fifteen.

Mr. Harrison: I offer this cash book in
30 evidence.

Mr. Maxson: No objection.

The Court: I guess it is in already.

Marked "Exhibit D-A-3."

Q. Do you find that entry properly transferred to the ledger? A. Yes, sir.

Q. And upon what ledger do you find it? A. At Sheet No. 1 of Mr. A. Gould Harrison's personal account—the loose leaf ledger which we are now using.

Q. And that entry appears in what form? A.
40 As a debit against Mr. Harrison's account, $115.00, November 5.

Q. And refers to what folio of the cash book? A. Page 339.

Mr. Harrison: I offer this sheet in evidence, too.

Marked "Exhibit D-A-4."

Cross examination by Mr. Maxson:

Q. You have charge of all the books of this company, didn't you? A. Yes, sir.

Q. Anyone else have anything to do with them at all—make any entries? A. On some of the books, yes, sir.

Q. Who, if anyone else? A. I have different assistants at different times.

Q. Who were they? A. The first one was a Miss Arnold.

Q. How long was she there? A. She left in 1908, I think.

Q. How long was she there? A. I don't know; she was there previous to my time.

Q. I am talking about during the period that you were the bookkeeper? A. Oh, I beg your pardon; I think it was less than a year.

Q. And who assisted you during that period? A. She did.

Q. Then she was there during your time? A. She came before my time.

Q. And she was there the first year that you were there, with you? A. Yes, sir.

Q. And who else? A. And after that, I think there was a Miss Miller.

Q. How long was she there? A. I cannot say, a couple of years, perhaps.

Q. During what year? A. 1909 and 1910.

Q. What was her name? A. Miss Bessie Miller.

Q. Where did she live? A. She lived in Montclair; I don't know the address.

Q. Has she changed her name? A. Yes, sir.

Q. What is her present name? A. I don't know what it is; I cannot remember; it is a very peculiar name.

Q. Does she still live in Montclair? A. Yes, sir.

Q. And what part of the books did she keep? A. She wrote up the journal from the blotter—sales book.

Q. Did she have anything to do with the slips in the drawer? A. No, sir.

Q. Who had charge of those? A. I did.

Q. Entirely? A. They were open for Mr. Harrison or any of the officers of the company.

Q. Who made the slips up generally? A. I usually did.

Q. How did you make them up with respect to the information that you needed to make them up; did you wait until somebody came and told you to put a slip in the drawer? A. No, sir; when Mr. Harrison asked for money, I gave him money and charged it up to him on the slips.

Q. Did Mr. Harrison always get his drawings from the company from you during the time you were there? A. Usually.

Q. Did he always? A. I don't know that he always did.

Q. Then, on some occasions, Mr. Harrison would draw money personally from the company, and what would be done about the slip?

Mr. Harrison: I object to that; he says he does not know.

(Question withdrawn.)

Q. Did Mr. Harrison ever draw any money personally from the company?

Mr. Harrison: Objected to, on the ground that the witness has already answered it with the response "I don't know."

The Court: The objection is overruled; put your question.

Q. Did he ever draw any money personally from the company when you were not there, when he would tell you about it? A. I don't know.

Q. Did he ever tell you that he had drawn any money from the company? A. He did when I was there, yes, sir.

Q. He did when you were there? A. Yes, sir.

Q. And never when you were not there? A. That I don't know.

Q. You had charge of these slips entirely, didn't you? A. Yes, sir.

Q. And if Mr. Harrison had drawn any money and entered it on the slip himself, you would have seen the slip, wouldn't you? A. Yes, sir.

Q. Did you ever find any slips? A. That I cannot remember, whether there were any in his writing or not.

Q. What did you do with these slips? A. Held them as cash.

Q. Where are they now? A. Destroyed.

Q. Where did this come from? A. That still belongs in the cash drawer.

Q. Then there are some slips still there in the Harrison Milling Company cash drawer? A. Yes, sir.

Mr. Maxson: We would like to have them.

Q. And they are all in your handwiting? A. That I cannot say; I think they are.

Q. But you have charge of them? A. Yes, sir.

Q. And if anybody drew any money in cash you simply put it on a slip, any old piece of paper, and

put it in the drawer? A. Not if anyone did—the members of the firm.

Q. Didn't you sometimes draw some? A. Yes, sir.

Q. Did you put a slip in for it? A. Yes, sir.

Q. How soon after you put the slip in did you enter it up in the cash book? A. I did not enter it up at all; it was not entered.

Q. Never entered in the cash books? A. Not mine, no, sir.

Q. None of yours were? A. No, sir.

Q. How soon did you enter them after the slip was made? A. Sometimes in a short time; at other times, at the close of the business of the year.

Q. Didn't you have any system about it? A. Not in regard to all of them, no, sir.

Q. You used your best judgment about when you should put the charge in the books of the company? A. I did as had been the custom previously.

Q. And you followed the previous custom? A. Yes, sir.

Q. You did not follow anyone's directions about it? A. No, sir.

Q. You used your own judgment? A. Yes, sir.

Q. You had some differences with F. K. Fish, didn't you?

The Court: About what?

A. We had words at different times, yes, sir.

Q. About what? A. Once in regard to closing the books.

Q. What do you mean? A. I mean, taking off a balance sheet and closing the general accounts and reopening them again.

Q. What was the difference? A. He wished a statement of the business along in the middle of the business year.

Q. Do you remember the year? A. No, sir, I do not; and I took off the statement and made a trial balance, and Mr. Fish told me to close the books; and I said, "I cannot very well do it now, because at the end of the year it will make a great deal of work, because we have got to pick out all these items from the different accounts"; and he insisted that I close them, and I refused.

By Mr. Maxson:

Q. What was his position at that time? A. He was there as a member of the firm.

Q. Was he an officer of the company? A. I think he was the president at that time.

Q. You refused to close the book in spite of his directions? A. Yes, sir.

Q. He then asked that you be discharged, didn't he? A. That I don't know.

Q. You don't know that he did? A. No, sir; I did not hear that.

Q. And never heard that? A. No, sir.

Q. Now, you recall very distinctly the occasion of the drawing of this check, don't you, for $115.00? A. I recall drawing it, yes, sir.

Q. You recall drawing the other checks that you drew during the time you were there at the Harrison Milling Company? A. Yes, sir, I recall drawing them; I could not name the checks.

Q. You recall the circumstances under which they were drawn, do you? A. Usually, yes.

Q. Did you draw any other checks of Mr. A. Gould Harrison's, at Mr. Fish's direction? A. Salary checks, later.

Q. I mean checks for payment of A. Gould Harrison's personal bills? A. I think not.

Q. This is the only one you ever drew? A. That I remember.

Q. Did you draw any checks for Mr. A. Gould Harrison's personal bills, when Mr. Fish was not there? A. I don't know——

Q. But you saw him taking money from time to time from the company, didn't you? A. He, at times, took money and asked me to charge it up.

Q. Was that at any time in excess of his salary?

Mr. Harrison: Objected to; this witness is not supposed to know the contents of the minute book, or how much salary he was entitled to.

Q. Was not his salary on the books of the company? A. He was drawing $25.00 a week.

By the Court:

Q. You saw an entry for salary for $25.00 a week? A. Yes, sir.

Further cross:

Q. Did he draw money in excess of that salary? A. Yes, sir.

Q. And did he tell you about it, so that you could put it in the books? A. It was charged up to him.

Q. Sometimes on slips, sometimes in the books? A. Yes, sir.

Q. How did you determine whether you would charge it on a slip or put it in a book? A. If it was cash taken out of the cash drawer, it was put on the slip; these are usually charged up at the end of the year.

Q. Who made the collections for the company in cash, in the office? A. I usually received them.

Q. And who made the collections outside? A. Mr. Harrison collected outside—I did it sometimes, though.

Q. And he accounted to you for the collections? A. Yes, sir.

Q. And how frequently did he account to you? A. He always turned it in the same day he got it, or the next morning, if he was out late.

Q. And then what did you do with respect to it? A. I credited it up to the person he collected it from, and put it in the cash drawer.

Q. On a slip? A. No, sir.

Q. Put it in the books? A. Yes, sir—whoever he had collected good money from, I gave them credit for it on the cash book.

Q. And that was your invariable custom? A. Yes, sir.

Q. You never put those things on a slip? A. Not that I know of—not in the individual account.

Q. Then, those slips represented debits, didn't they, generally, in the cash drawer—represented money that had been drawn out of the cash? A. Usually.

Q. But there were exceptions, were there? A. Yes, sir.

Q. And this was one of the exceptions? A. That is a debit.

Q. Is this an exception to the general rule, or is that according to the general custom with respect to these slips? A. That is the way it is generally done.

Q. And that is a charge, is it? A. Yes, sir.

Q. And to whom is this charge made? A. Mr. A. Gould Harrison.

Q. And what does it represent—I mean, what does it represent— A. Mr. Harrison had a check of Mr. L. G. Dye's of $100.00, which he indorsed over to the Harrison Milling Company, and then there was a check drawn to the Federal Trust Company for $120.00 for Mr. Harrison; which left him owing $20.00.

Q. For Mr. Harrison? A. Evidently for Mr. Harrison, or it would not have been charged to him.

Q. Do you mean to say there was a check of the Harrison Milling Company for $120.00 drawn to the order of the Federal Trust Company? A. I don't know; it is so far back I cannot remember just how that slip was made.

Q. You made this slip personally and it is in your handwriting? A. Yes, sir.

Q. Do you mean to say today you don't know what it means?

The Court: He did not say that.

Q. And it was done for Mr. Harrison for some purpose, was it? A. Evidently.

Q. And will you again explain what the other item means of $100.00? A. A check of L. G. Dye's, in favor of Mr. Harrison, which he turned over to the Harrison Milling Company?

Q. Mr. L. G. Dye had drawn a check for $100.00 to Mr. A. Gould Harrison, and he had indorsed that over to the Harrison Milling Company, and in exchange had taken the Harrison Milling Company's check for $120.00, drawn to the order of the Federal Trust Company, and that leaves a balance charged to A. Gould Harrison of $20.00? A. Yes, sir.

Q. That is the transaction; now, that was the regular custom then, to debit anybody who got any money from the Harrison Milling Company, either on the cash book or by putting one of these slips in the drawer? A. Yes, sir.

Q. Now, didn't you sometimes give people credit for money on these slips as well? A. I don't think so.

Q. Don't you know? A. There was no one had any money that I know of, except Mr. Harrison and Mr. Fish, and, perhaps, myself.

Q. I am talking about money which was paid to the Harrison Milling Company on account, or any other way; suppose somebody paid in some cash to the Harrison Milling Company or gave you a check to the order of the Harrison Milling Company, would you ever put that on one of these slips in the cash drawer? A. No, sir.

Q. It was not the custom? A. No, sir.

Q. Where is the stub of that check? There appears to have been an erasure here on the stub of that check? A. Yes, sir.

Q. Did you make it; is that in your handwriting? A. That is in my handwriting.

Q. Was the previous entry there in your handwriting? A. It looks like it.

Q. What was the previous entry? A. That I don't know.

Q. Cannot you tell—you can see? A. I can see the top of a "G" there—that is all I can make out of it; I could not tell what it was.

Q. Now, were those writings on the stub of that check all made at the same time? A. I don't know.

Q. Then, you don't know whether this check was drawn on November 6th, or not, do you? A. I do, yes, sir.

Q. But you don't know whether this erasure here was made sometime previous to the drawing of this check or not? A. It might have been.

Mr. Harrison: Let the Court look at the erasure.

(Court examines the erasure in the book.)

Q. You remember the circumstances under which this check was drawn, don't you? A. Yes, sir.

Q. And you remember what Mr. Fish said to you at the time? A. Yes, sir.

Q. And what Mr. Harrison said to him at the time? A. Yes, sir.

Q. Now, will you again relate the conversation? A. Mr. Fish said to him, "Why are all these bills on your desk?" and Mr. Harrison replied, "Those are personal bills of mine;" and Mr. Fish said, "Why don't you pay them and get them out of the way?" then Mr. Harrison said, "I have not got the money;" and Mr. Fish said, "Well, draw a check of the company and I will sign it, and pay them off and get them out of the way, and charge it up to yourself." I drew the check.

Q. Then and there? A. Yes, sir.

Q. And they both signed it? A. Yes, sir.

Q. When did you make the entry in the book? A. I usually make them right away.

Q. Did you make it right away after you had drawn the check? A. I might have made it the next day.

Q. You could not have made it the day before? A. No, sir.

Q. How do you account for the fact that that entry is in the book on the 5th, and this check drawn on the 6th? A. I might possibly have made a mistake in the date in entering it in the book.

Q. But that is followed by a whole lot of other entries, isn't it? A. It is one of the last.

Q. But there is another entry following that? A. Yes, sir.

Q. And a whole lot preceding it? A. Yes, sir.

Q. Here is an entry of a telephone charge immediately afterwards, and preceding it there are about twenty other entries to the 5th; do you think you made a mistake about that? A. It is possible; we have extensive items to charge up every day.

Q. Now, you have referred, Mr. Tichenor, to the

minute-book and Mr. Fish's having seen it from time to time? A. Yes, sir.

Q. And particularly the one time in 1908? A. Yes, sir.

Q. Why do you remember that occasion more particularly than any other? A. Because I saw him bring it back to the office.

Q. Just about the time of the meeting? A. That I could not say; I don't know just when it was.

Q. Now, which meeting did you particularly refer to, that Mr. Fish attended with Mrs. Harrison?

Mr. Harrison: At the mill.

A. The first of September, 1908, the first one that I was there.

Q. September 8th, is that the minute——

Mr. Harrison: Objected to; he did not have charge of the minute book; he merely fixed the time of the meeting when this minute book was in the presence of the various persons at the meeting.

Q. And in whose handwriting is that? A. That is Mr. Harrison's, Mr. A. Gould Harrison's writing.

Q. Did you ever enter any of these minutes? A. Yes, sir.

Q. Is this the one you entered—the one of October 21, 1909? A. Yes, sir.

Q. Do you remember other occasions when Mr. Fish was down at the mill at meetings of the company? A. Yes, sir.

Q. How many other occasions? A. Three or four other meetings, I think.

Q. Did Mrs. Harrison usually attend? A. Yes, sir.

Q. In what years? A. That I could not fix the times; she was there at the first meeting in 1908, and after that, I could not say just what meetings she attended at the office.

Q. How many meetings did she attend during the time you were there? A. Perhaps two or three meetings, so far as I know.

Q. Mr. Fish sometimes signed checks in blank for you, didn't he—I mean before the check was filled out—where the stub had been filled out? A. I don't remember that he did, no, sir; it was not the custom; it is possible that he did, but I don't remember it.

Q. You had some conversation with Mr. Nasmyth about the $115.00 check when he was out there? A. I could not say; I might have.

Q. Didn't you call their attention to the erasure on the stub of the check-book? A. I don't think so.

Q. Didn't he call your attention to it, and ask you if you could tell him to whom the check was originally drawn, as shown by the stub? A. I don't remember it.

Q. And didn't you tell him it was drawn to somebody named Gould? A. No, sir.

Q. Wasn't it somebody named Gould to whom checks were drawn sometimes from the company? A. You mean Gould as a last name?

Q. Was not there some other Gould? A. I do not remember any Gould.

Q. And you are positive you did not tell Mr. Nasmyth that that stub had originally been drawn to the order of someone named Gould—not Mr. A. Gould Harrison? A. I am quite sure I did not.

Q. And do you recall the conversation about the erasure on the stub? A. With Mr. Nasmyth, no, sir.

Q. Then you did not have any such conversation? A. No, sir.

Q. But you did have some conversation about this $115.00 check? A. He may have spoken to me about it; I did not think I did.

Q. Then you did not have any conversation about this check at all? A. I said I did not remember any conversation about it.

Q. Then you want to change that, do you? A. I said I did not remember any conversation with Mr. Nasmyth regarding that check.

Q. You made out a statement of Mr. A. Gould Harrison's account for Mr. Fish? A. Yes, sir.

Q. And did it show some large overdrafts? A. It showed overdrafts, yes, sir.

Q. Did you call Mr. Fish's attention to them? A. I made out the statement just as the account said, and gave it to him.

Q. What did you say to him about the statement? A. That it was not according to the book.

Q. Anything else? A. I don't remember.

Q. Did you have any other conversation with him about it? A. I had a good deal of conversation with him about it, but I do not remember what it was.

Q. What was the gist of it? A. He was asking me questions about——

Q. What sort of questions did he ask? A. He asked me what different entries meant, and credits and debits—what they were for—debits and credits, and I would look them up as far as I could for him; of course, this all happened previous to my time.

Q. Where is the statement that you made up for him? A. I don't know.

Q. Did you keep a copy of it? A. I did, I think.

Q. Have you got it? A. I have not.

Q. Do you know where it is? A. No, sir.

Q. See if you can find it, will you? A. I have not got it; I would not know where to find it.

Q. Did Mr. Fish call your attention to the account of A. Gould Harrison? A. He did.

Q. He called your attention to these overdrafts, didn't he? A. He asked me what they were.

Q. He directed your attention to them? A. Yes, sir.

Q. He said, "They are overdrafts of A. Gould Harrison's"? A. He may have said that.

Q. And what did you say in response to that, if anything? A. I said that there were corresponding credits to balance them; I think the statement I made up shows that.

Q. Then, when Mr. Fish said the account was all right, he did not refer to any overdrafts of Mr. A. Gould Harrison?

Mr. Harrison: Objected to as a conclusion he is putting in the mouth of this witness.

The Court: I will allow the question.

Q. (Question read). A. After I had told him that these credits had been made to correspond to the charges.

Q. But your accounts showed the credits, didn't they? A. The account in the ledger did; I think the statement also—I am not sure.

Q. You would not make up the account and put the debits on and not the credits, would you? A. It all depends; he may have asked me for a list of the charges against his account.

Q. Do you know what he asked you for? A. I imagine it was a statement of the account as it stood on the books, but I am not sure.

Q. But you do remember very distinctly that he said the account was all right? A. Yes, sir, after I had explained them to him; he asked me what those credits were, and I told him they were entries made after the meetings, according to the minute book and credits to balance the charges against the account—he said, "That is all right."

Q. Then, you do recall the conversation? A. I recalled that all the time.

Q. You did not recall it a moment ago.

Mr. Harrison: Oh, yes, he has repeated that two or three times.

Q. He told you—the bookkeeper of the company—that these credits were all right? A. He did.

Q. And for what reason, do you think?

Mr. Harrison: I object to that.

Q. Do you think that he might have charged you with having advanced moneys there—is that the idea?

Mr. Harrison: I object.

The Court: The objection is sustained.

Q. You knew all about Mr. Harrison's overdrafts, didn't you? A. At that time, no, no, sir, I did not; I did not know just what the account meant; I did not know what salary he was getting.

Q. But you had just explained to Mr. Fish all about them, hadn't you? A. I explained that these entries came from the minute book.

Q. And did you take them out of the minute book? A. By the direction of Mr. Fish or Mr. Harrison; Mr. Harrison, probably.

Q. When you took them out, you saw they were overdrafts, didn't you? A. I did not know what they were.

Q. Could not you read the minutes? A. I did not know what he was entitled to.

Q. Could not you read the minutes? A. I did not know what he was entitled to.

Q. Could not you read the minutes? A. Yes, sir.

Q. Then you knew they were overdrafts, didn't you? A. Yes, sir, according to what was said in the minute book.

Redirect examination by Mr. Harrison:

Q. What was the last time that your salary was increased? A. The first and last time was, I think, while Mr. Fish was there—at the time of Miss Miller's leaving.

Q. When was that? A. At the time she left to be married.

Q. Can you fix the time? A. I could readily, from the books.

Q. Who increased your salary? A. Mr. Fish.

Q. Did you submit to Mr. Fish any statement in addition to the statements which you have referred to in your cross examination? A. I think I made several different ones about the same thing.

Q. During what period did you make these several different ones? A. Along about the first part of 1910, or the last of 1909.

Recross examination by Mr. Maxson:

Q. Before you leave the witness stand, I want you to say whether you are positive that you drew this check immediately after this conversation that you related between Mr. Fish and Mr. Harrison? A. I cannot say that I drew it on the minute that they told me, because I drew them as soon as I got to them.

Q. Did Mr. Fish sign it then and there? A. He might have signed it the next day; Mr. Fish and Mr. Harrison both had to sign them.

Q. But they were both there present? A. They were there present at the time of the conversation.

Q. You are not sure when you drew that check? A. I drew it that same day.

Q. And you made the entry in the book, that you drew the check? A. Certainly.

Q. You are sure about it? A. I could not have made the entry until the check was drawn.

By the Court:

Q. Does the entry relate to the check itself, in so many words? A. It says: "Check, $115.00."

Q. It does not give the date of the check or anything? A. No, sir, it just gives the date of the entry, and says: "Check, $115.00."

Further recross:

Q. Did you draw any other checks at the same time you drew this? A. I don't know.

Q. Will the check book show? A. It will show it was drawn on the same date; there is one there on the same date, drawn to the First National——

Q. Look and see if there are some. A. There is one there drawn for currency on the same date.

Q. Then, there were three checks drawn, on the same date? A. Yes, sir.

GEORGE FRANKLAND, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Harrison:

Q. Where do you live? A. East Orange.

Q. Were you ever employed by the Harrison Milling Company? A. I was.

Q. During what period? A. From the middle of December, 1909, to the middle of March, 1910.

Q. In what capacity? A. Assistant bookeeper.

Q. Was Mr. Tichenor at the office at that time? A. Yes, sir.

Q. Do you know Frederick K. Fish? A. Yes, sir.

Q. When did you first know him? A. When I first went with the Harrison Milling Company.

Q. How frequently was he at the office during the period that you were there? A. He was there very
20 nearly every day up to shortly after the first of the year 1910, and then he was absent for a period of about three weeks, I think; maybe a little longer; then he came back again at times,—not regularly, though.

By the Court:

Q. Not every day? A. No, sir.

Further direct:

Q. What did he usually do about the office? A. I don't know; he seemed to look things over gen-
30 erally.

Q. Supervise things? A. No, sir, he just seemed to keep an eye on everything that was going on; he was out in the mill a great deal and in the office; of course, I don't know what he did while he was in the mill.

Q. What did he do in the office? A. Just looked around while we were working; he would look at the books, and look over the files of the bills or the accounts of grain shipments or orders—such things as that—look over the whole order book.

Q. Did he, during that period, converse with you
40 about the books? A. No, sir, he conversed with Mr. Tichenor.

Q. How often? A. Well, almost every time that he came to the office.

Q. And for what period of time? A. A half an hour or three-quarters of an hour.

Q. Do you know of any statements being given by Mr. Tichenor to Mr. Fish? A. I have heard Mr. Fish ask for statements.

Q. How frequently? A. Half a dozen times.

Q. Do you know whether he received them or not? A. I never saw him get one, but I heard him remark to Mr. Tichenor about the statements he was giving him—that he asked for explanations of different items; just what items, I do not know.

Q. Did you know whether he had statements in his hand at that time? A. I think he did.

Q. Did you ever hear him conversing with A. Gould Harrison about the affairs of the corporation? A. I have heard him, but what conversation he had, I don't know.

Q. Did you ever see him and Gould Harrison go over the books of the corporation? A. I think so.

Q. Aren't you positive about it?

Mr. Maxson: This is not cross examination; I object to that form of direct examination.

Mr. Harrison: Strike that last question out.

By the Court:

Q. When did you see this—when did you see them go over the accounts? A. Well, various times; I cannot say exactly when.

Q. Did you see them going over the accounts more than once? A. I think so; I would not say positively, but I think I have.

Mr. McCarter: Mr. Tichenor is away from the books now; may he go?

Mr. Maxson: I may need him this afternoon.

The Court: How about excusing him now to return at three o'clock; how far is the mill from here?

Mr. Harrison: Three-quarters of an hour on the trolley.

(The witness was withdrawn, in order to put Mr. Tichenor on the stand.)

BERT B. TICHENOR resumes the witness stand.

Further cross examination by Mr. Maxson:

Q. Mr. Tichenor, you said that Mr. Frederick K. Fish did not do anything out there except look around the office? A. Looking over the books and out in the mill.

Q. Didn't he buy any of these goods of the company? A. He may have; I have nothing to do with that.

Q. Did he have anything to do with financing the company—raising any money for it? A. I believe he did make a loan once or twice.

Q. Do you know it? A. He did, yes, sir.

Q. He loaned the company quite some money, didn't he?

Mr. Harrison: Objected to.

Q. What did he loan the company? A. I think it was $3,000, if I am not mistaken.

Q. He made it other loans, didn't he, besides that? A. I think there was more than one, but I do not just remember what they were.

Q. Now, didn't you have George Gould on the books of the company? A. Yes, sir.

Q. And he was on the books a great deal, wasn't he? A. Yes, sir.

Q. Could that stub of that check have been drawn to his order? A. No, sir.

Q. It could not have been? A. I don't think so.

Q. Do you know? A. Well, I have no recollection of ever drawing a check to his order; there was no reason for it.

Redirect examination by Mr. Harrison:

Q. Were the loans made by F. K. Fish to the Harrison Milling Company, to which you have just testified? A. Yes, sir.

Recross examination by Mr. Maxson:

Q. Didn't you draw up twenty checks at the time you drew that check for $115.00? A. Not that day.

Q. Are you sure of that? A. The only way I could tell is by the dates in the check stubs.

Q. Didn't you have another bank account? A. I think we did have at that time.

Q. Don't you know? A. We had an account in the——

Q. Won't the cash book show? A. It will show, yes, sir.

Q. What does it show? A. It shows—on that date there were two other checks drawn, according to the cash book; according to the cash book, it shows all of these on the 5th, but this check, according to the check stub, was drawn on the 6th.

Q. And there were only two other checks on that day? A. There was a check drawn for currency; the currency check was to draw cash to make up the salary pay-roll; that is what that is usually for.

George Frankland—By Defendants—Direct

GEORGE FRANKLAND resumes the witness stand.

Direct examinaion (continued) by Mr. Harrison:

Q. Did you hear any conversation between Mr. Fish and Mr. A. Gould Harrison relative to these statements or relative to the books? A. I have heard them discuss it, but I did not consider it any of my business and never paid any particular attention to what they were saying.

Q. I show you "Exhibit C-1" for the complainant, being a minute-book of the corporation, and ask you when and where you first saw that book? A. In the safe of the Harrison Milling Company when I first went there.

Q. And what position did it have in the safe? A. It stood on end that way (indicating) between various other books of the company.

Q. Was it in full view when the safe door was open? A. Yes, sir.

Q. Did you ever see that book in Mr. Fish's possession? A. Yes, sir.

Q. When and where? A. At various times in the office, in the mill.

Q. Was that during the period while you were employed there? A. Yes, sir.

Q. And how long did he, on any of these occasions, have possession of the book? A. The times were of various length.

Q. What would he do with it? A. He would be reading it, as a general rule—going through it.

Q. Do you know whether he ever took it from the office? A. Yes, sir.

Q. When? A. Once, that I saw him take it.

Q. When was that? A. If I remember rightly, it was just after he returned after that absence of about three weeks; it must have been about the first of March, 1910.

No cross examaniation.

AMOS GOULD HARRISON, sworn in his own behalf, testified as follows:

Direct examination by Mr. Harrison:

Q. You are the defendant in this case, Mr. Harrison? A. Yes, sir.

Q. What is your business? A. Grain broker.

Q. How long have you been in that business? A. 25 years.

Q. And when did you first go in that business? A. I went in that business with father and Ransford Smith.

Q. What year was that? A. I think it was around 1888, 1889 or 1890, along there.

Q. Where did you go in business? A. Montclair.

Q. The same place where you are now at? A. Yes, sir.

Q. And were you associated with your father and Mr. Smith as partners? A. Yes, sir.

Q. How long did that partnership last? A. According to my recollection, it was probably two or three years or possibly four that father and Rans and myself,—and then Rans Smith and I were in partnership for three or four years, until Mr. Mullen took it up; I do not recall the date.

Q. When you refer to Mr. Mullen taking it up, what do you mean? A. When the assignment was made—in what year I forget—the assignment of the G. B. Harrison Company——

Q. Had the company failed? A. Yes, sir, the company had failed—Mr. Mullen——

Q. Who is he? A. My father-in-law; he guaranteed my accounts to purchase this business from the assignee solely to put me in the business until such a time as I could see my way clear to finance it myself.

Q. Who actually purchased the good-will and stock in trade of the defunct partnership? A. I actually purchased it, through Mr. Mullen's help; I was the party that the transactions were negotiated with.

Q. What form did it then take? A. It was practically carried on as an individual; I would go to Mr. Mullen for a loan or indorsement; he always considered the time would arrive when these bonds and such matters as that would be cleaned up, and he was waiting for it; and the business would be mine entirely.

Mr. Maxson: I move that all be stricken out; as to what Mr. Mullen considered is not evidence in this case.

Mr. Harrison: He told him that.

Mr. Maxson: Then I move it be stricken out as hearsay.

The Court: Strike it out.

Q. What form did the business take—an individual form—a partnership form, or a corporation form?

Mr. Maxson: I object to the question as leading.

Q. When was the Harrison Milling Company incorporated? A. In 1899.

Q. How soon after the purchase of the good will and assets in the hands of the assignee was the Harrison Milling Company incorporated?

Mr. Maxson: Objected to; I do not see why we should encumber the record with this history of the company before it was formed.

Mr. McCarter: The issue is distinctly made in the bill and answer.

The Court: There is no need of encumbering the record with this.

Q. What part did you play in the business of the Harrison Milling Company? A. At what time?

Q. Beginning with the incorporation of the company? A. I was the agent in charge and had the sole control of it.

Q. Up until what time? A. Well, up to the present time, up to this minute.

Q. Do you know Frederick K. Fish? A. I have seen him lots of times.

Q. When did you first know him? A. A good many years ago.

Q. How many years ago? A. It might be 25 or 30 or 40 years ago, maybe.

Q. What was your first connection with him, Frederick K. Fish, Sr.,; how did you first meet him? A. The first—when I was a young fellow, in a social way, when he was connected with G. B. Harrison Company.

By the Court:

Q. When did you first have anything to do with him in connection with the Harrison Milling Company; when was that? A. You mean what conversation, or when I met him at the inception of the Harrison Milling Company?

Q. When did you meet him first in these matters? A. I met him first after his son Fred, Jr., was at the office, and suggested his father—that I should meet and talk it over with him, and he would talk with his father first, to make a collateral loan on some stock of the company—he would make me a loan.

Q. When was that, do you recall? A. Oh, it was incorporated in 1899; it was in the summer time of 1903.

Q. Did you see Mr. Fish in connection with this

proposed loan? A. I saw him at the Astor House in New York.

Mr. Maxson: Objected to; my objection is, that if it is the purpose to show by this witness that this was a loan, the investment of this money, it is not within the pleadings, and I object to the question; there is not anything pleaded about there having been a loan for the purpose of taking this stock.

The Court: I shall allow it.

Mr. Maxson: I want to get the objection completely on the record—that is, if this were a loan, then it should have been pleaded.

The Court: The objection is overruled, and the question may be answered.

Q. Did you see Mr. Fish in the summer of 1903 at the Astor House? A. Yes, sir, we had a little lunch; we were talking it over; I met him at the office first.

Q. What loan did you talk over? A. His son had spoken previously to his father.

Q. Just tell what loan you talked over with Mr. Fish, Sr. A. We talked over the loan of $4,000 that I mentioned to his son; advancement against 40 shares that he asked for, stock of the Harrison Milling Company.

Q. What did he say? A. He said he would advance this money, and he would give me a check in a day or two upon the receipt of a statement, for a portion, or half of it, I think he said $2,000; and upon the examination of the statement, and he coming out there to see me further about it, we had probably one or two more conferences or talks; he sent the other check for $2,000, making $4,000, and we arranged to give him the 40 shares of stock of

the Harrison Milling Company, with the understanding that he was to receive out of that investment half of the profits.

Q. Did you have any talk with Mr. Fish at that time, or at any subsequent time, with reference to the connection that Mr. Mullen had had with the business? A. I certainly did; we explained to him the conditions that had heretofore been mentioned, as Mr. Mullen had often talked it over; I think there is one of those copies bears it out; it was written there that myself would be elected manager under the same conditions as before.

Q. When did you first speak to Mr. Fish about Mr. Mullen's connection with the business, and your understanding with him concerning withdrawals? A. The first time I met him in New York; we had to get accommodations outside, and we had to piece along the best way we could.

Q. What did you say to him about this arrangement had with Mr. Mullen?

Mr. Maxson: Objected to, on the ground that any statement about an arangement had with Mr. Mullen is not binding to-day on Mr. Fish, because this is a corporation.

The Court: I am going to allow that question; it enters into the transaction between these two men, and affects the interests, probably, of the whole situation.

Mr. Maxson: I am objecting to it on the ground that this complainant has purchased stock of a corporation, and any arrangement that may have been had between one of the stockholders—he purchased it, according to the testimony of this witness—he became a stockholder—any arrangement that one of the officers of this same corporation may have had

with somebody else who was no longer connected with the company, is not within the issues connected with this case, to-day.

Mr. McCarter: The object of this testimony is to show, that at the time Mr. Fish came into this company he was especially apprised by the conversation, of the arrangement that had been made.

The Court: I shall allow the question.

A. I wanted to be, in the first place, and was, as far as I know, as fair with Mr. Fish as possible.

Mr. Maxson: I move that that be stricken out.

The Court: Strike it out. Tell what took place.

A. I explained to Mr. Fish thoroughly——

The Court: That will be stricken out. Repeat the conversation.

A. I told Mr. Fish that day that we were taking lunch together in New York that I had had the arrangement with Mr. Mullen, and it was thoroughly understood with Mrs. Harrison—

Mr. Maxson: Objected to.

The Court: "Thoroughly understood" will be stricken out.

By Mr. McCarter:

Q. Just state what you said. A. I told Mr. Fish that it was agreed, and always understood, with Mr. Mullen, that I was to draw a salary of $20 a week, as the bookkeeper we then had, Mr. Coleman, drew the same, and any reasonable amount that I needed, and the business would warrant over and above that salary; that was practically just

a drawing account of a stipulated sum weekly—that over and above that, I should have what I needed; there was never any question about it, because the business was to be mine; and when he went in Mr. Fish, it was under the same conditions that I had with Mr. Mullen, because I would get along with as little as possible, but I was going to have a part of what I made, and he and Mr. Fish thoroughly understood it, and came out there later and looked over the accounts, and was perfectly satisfied with them; and the day I was talking with him he was perfectly satisfied to make that loan on the stock.

Mr. Maxson: I move that all of that be stricken out with respect to Mr. Fish coming out and being perfectly satisfied.

By the Court:

Q. What did Mr. Fish say to you upon remark as to this transaction, what did he say to you about it? A. He stated he had no objection, and was willing to have it go on as it was before, and if I saw that the business was paying more profit—if the business was paying more in amount, and left more profit than I was drawing out for my living, that we would divide it up at the end of the year between us.

Further direct by Mr. Harrison:

Q. Did you give Mr. Fish any statements? A. He had several of them.

Q. Did you give him any statements which included the amount of your drawing account? A. At what time?

Q. In 1903? A. That was shown to him; I went over the account at the office with Mr. Coleman and Mr. Fish in detail, to show what were bills payable and bills receivable.

Q. Did you call his attention specifically to your drawing account? A. That was in with the rest.

Q. And do you recall what that account showed at or about July, 1903? A. I think around $1,400 or $1,500 it was then; I was living at Caldwell at that time, and the expenses were not as much as they were at Montclair.

Q. What did Mr. Fish do after he acquired this stock, either as a stockholder or as a borrower?

Mr. Maxson I object to the form of the question; he either acquired it one way or the other.

By the Court:

Q. What did he do after he acquired this stock, as far as the business is concerned? A. He would come out there at times and talk with me and look over the accounts, and look over the matters pertaining to the books, and talk with the bookkeeper and talk over business conditions.

Q. How often? A. At times; I cannot just remember; he was away at the mountains so much in the summer, for two or three or four months; probably there were one or two summers that he was at home; during the fall, spring and winter, he was out there several times during the year, and I was in to New York a number of times; I would go over on the matter of finance or buying, and meet him in New York.

Q. How long did this continue? A. Up to the time he asked for equal representation on the Board.

Q. When was that? A. I think it was 1910.

Further direct:

Q. Between the time of his acquiring the stock in 1903 and the time when he came to Montclair

permanently in 1909, he was at the office several times during each year; and you went in to New York several times during that same period? A. Yes, sir.

Q. When he came to the office on such occasions, what would you and he do while he was there? A. We would look over the accounts and talk of general business conditions, and he was always wanting to know how much cash we had on hand and how much was owing us, and about certain accounts, because he always seemed to know more about bookkeeping than I did; he was a good man at it and I was an amateur.

The Court: Never mind that.

Q. Who had charge of the books during that period from 1903 to 1909? A. Mr. Coleman was there from the date of the incorporation in 1899 to 1907; since that time Mr. Tichenor has been the bookkeeper.

Q. During this period did you make any reference in Mr. Fish's presence, or confer with him concerning your drawing account? A. Yes, sir.

Q. How frequently? A. It was always at the annual meeting and other times when he was out there; I would take the general statement off once in a while, how we were getting along, every two or three months; and Mr. Fish would generally come out and sometimes I would walk over to the train with him and we would speak about what the expenses were and what the drawings were; and he would say, "Don't stint yourself."

Mr. Maxson: Before any conversation is related, I would like the time fixed, so that we can get it specifically on the record; we cannot contradict any conversations of that kind.

The Court: I think that the answer must stand as it is.

Mr. McCarter: I am tired of these constant interruptions.

Mr. Maxson: Well, I cannot help how tired you feel; whenever it is necessary to make objections, I shall make them.

The Court: Proceed.

A. (Continued.) Mr. Fish said, "You are competent to run the business, and you know what we are making, and you know what you can afford to spend, and as long as I get a fair return from my investment I am satisfied; the conditions look prosperous, and you are competent."

Q. Did you ever have any meetings with Mr. Fish at your own home? A. Yes, sir.

Q. What was the first meeting that was held at your home? A. The first meeting was on Elm Street in 1903.

Q. Who were present at that meeting? A. Mrs. Harrison, Mr. Fish and myself.

Q. Can you fix the time of the meeting in 1903? A. Well, of course, the minutes are antedated so much, that looking at the minute book kind of confuses me as to the real date, but I know it was in the fall; the meeting was in the fall; it was chilly, because we had a grate fire, and I think it was after Mr. Fish came from the mountains.

Q. At this meeting on Elm Street in 1903, what conversation did you have in Mr. Fish's presence concerning the business of the Harrison Milling Company? A. I stated to Mr. Fish what had been previously said over in New York, previous to his making the loan on the stock.

Q. That is concerning the withdrawals? A. Concerning the arrangement I had with Mr. Mullen as to the drawing account.

Q. Did you tell him at that time the amount of the withdrawals you had made? A. I think at that time, for a number of years, Mr. Coleman kept a little book, or I kept a little book with Mr. Coleman; I have one here something like it.

Mr. Maxson: Objected to as not responsive.
The Court: Strike out "I think."

A. I had some figures there appertaining to the business, what our loans were and the discounts.

Q. On what sort of memorandum did you have those figures? A. On a little pass-book.

Q. Were these figures contained in that book? A. Yes, sir.

Q. What did you do with these figures; did you exhibit them? A. I don't know whether he saw them or not, but I know that I read them to him as he sat around the fire; he must have seen it——

Mr. Maxson: I object to that part of the response which says he must have seen it; I think this witness should be confined to answers to the questions; I don't want to prolong this hearing.

The Court: The objection is sustained.

Q. What was said at that meeting concerning the withdrawals made and to be made by you from the Harrison Milling Company? A. At that meeting the question of the withdrawals was spoken of, and Mr. Fish said he was satisfied, and agreed that they should go on the same as they had done heretofore——

Q. Now, when was the next meeting that you had at the office of the company at which Mr. Fish was present? A. Well, now, so long a time has elapsed, it is hard to tell; I think we must have

had a meeting probably a month or two after that —probably sooner.

Q. And what took place at that meeting, if you recall? A. I could not recall unless I could refresh my mind from the minutes.

Q. I call your attention to the minute dated November 18, 1905, page 28 of "Exhibit C-1" for complainant, signed "U. S. Coleman, Secretary, by A. Gould Harrison, pro tem," and ask you to detail the circumstances in connection with the passage of that resolution.

Mr. Maxson: I object to that—I don't think this witnes can properly testify to the circumstances which led to the passage of a resolution.

By the Court:

Q. You know this minute book? A. Yes, sir.

Q. Have you examined it often? A. Yes, sir.

Further direct:

Q. Where is the meeting here? A. November 18, on this page.

Q. Do you remember the passage of a resolution at this meeting? A. If I can explain to the Court just exactly how it happened, how that was; I would not swear to the date when the meeting was; of course, the date the resolution is written in there is November 18, but the meeting relating to this resolution may have been before that, because Mr. Fish at this meeting previous to this date, November 18, a little meeting we had, we talked over these matters of overdrafts and various business conditions, and he said, "Gould, it will be better to have this resolution prepared by your brother; it will be more in legal form, and more in keeping with business conditions." He said, "I don't know

how to make a resolution out;" and I did not myself, and he wanted me to have my brother form this resolution, which I did a short time afterwards, probably two or three weeks or a month, I don't know when; and after my brother had handed me the resolution, I showed it to Mr. Fish before it was copied in the book, and he was perfectly satisfied with it, and he said it was in good form and looked all right, and he said it would be better to have this motion drafted in the book as coming from him, instead of from Mrs. Harrison or myself—that it would be more in keeping.

Q. Where was the minute book kept? A. In the safe.

Q. Did you ever show the minute book to Mr. Fish? A. A number of times.

Q. Have you ever shown the minute book to Mr. Fish? A. Yes, sir.

Q. Did you show it to him after the preparation of that resolution? A. I did, yes, sir, and he saw the copy of the resolution before it was put in the book, and approved of it.

Mr. Maxson: I move that it be stricken out now, that "he saw a copy of the resolution and approved of it."

By the Court:

Q. What did he say about the resolution? A. He said it was perfectly satisfactory, as my brother had written it, the wording and amounts, and he saw no objection.

Further direct:

Q. How soon after the minute was written in the book did he see the book and speak as you said he spoke? A. This was at the next meeting that he saw it.

Q. Had he seen it before that? A. He saw the copy of the resolution before that, and before the next meeting he had seen this resolution and after I had had it copied.

Q. When was the next meeting of the corporation held after the meeting of November 18, 1905? A. Well, there must have been a meeting in 1906.

Q. Do the minutes of such a meeting appear in the minute book?

Mr. Maxson: I object to this.

Q. I ask if the minute book shows any meeting in 1906? A. No, sir.

Q. What is the next, following the minute of November 18, 1905? A. That is on September 2nd, 1907, according to the book.

Q. Was such a meeting held? A. The meeting of the stockholders was held, and the directors, but whether it was at that time or not I cannot say, because so many times and mostly always there were annual meetings that Mr. Fish was not there at that time, and he would come out a week or two after he returned from the country, and we would have a meeting, and he would stay up there two or three hours and sometimes longer, and sometimes stay over night.

Mr. Maxson: Why is it necessary to put all this in the record?

A. When our annual meeting should have been held in July, Mr. Fish was not in the State; he was away in New York State and could not attend the meeting, and upon his return to the city we would hold a meeting as soon as convenient to Mr. Fish, and then the minutes were put on the book at Mr. Fish's suggestion, as near the annual meeting as we thought was convenient.

Q. Do you mean by that, that the date does not express the actual date of the resolution, does not show the actual date of the meeting? A. No, sir, the date here does not show the actual date of the meeting.

Q. And at whose suggestion did you change the date? A. Mr. Fish's.

Q. And what expression would he use at such times, what would he say? A. He said it was better in corporations to have a stockholders' meeting nearer the end of the fiscal year or the beginning, and that I should antedate the meeting—date the meeting back for a month or two or so, because he did not expect to get there at that time.

Recess to 2 P. M.

After Recess.

AMOS GOULD HARRISON resumes the witness stand.

Direct examination (Continued) by Mr. Harrison:

Q. I show you minute, dated Montclair, N. J., as contained in the minute book of the corporation, and ask you whether those are the minutes of a meeting actually held? A. Yes, sir, they are.

Q. Now, when was the meeting held of which that purports to be a minute? A. That meeting, to my recollection, was held during October or November, but this was held later than it purports to be on the minutes. The meeting itself was held along in October or November; I cannot say positively.

Q. Why was the regular date put there for the meeting? A. That was at Mr. Fish's suggestion that the May meeting was held later—that the minutes should be recorded on the books.

New Jersey State Library

Q. From which source did you obtain the figure which you find in that minute of $386.74? A. Meeting of September 2, 1907.

Q. From what source did you obtain the amount which is inserted in that resolution? A. From the bookkeeper, Mr. Coleman. I may explain to the Court that both our bookkeepers were, practically speaking, experts; they were very competent, but people like Mr. Fish and myself——

The Court: Strike that out.

Q. When was that minute first shown to Mr. Fish? A. The day the meeting was held; what transpired at the meeting is on a slip of paper; the minute book was on the desk, and I drafted the matters that were taken up, on a slip of paper, and afterwards we put them on the minute book, and at the next meeting they were shown to Mr. Fish, and before the meeting was entered I would read over what had transpired at that meeting.

Q. I call your attention to a minute of—at the top of page 30—and ask you when the meeting was held of which that entry purports to be a minute? A. I cannot say when the meeting was held.

By Mr. Maxson:

Q. What is the date of it? A. September 8, 1909.

Further direct:

Q. Was it before or after the date? A. After.

Q. How much after? A. A month or so, probably.

Q. Where was that meeting held, if you know? A. My recollection is, the starting of that meeting was held at our house and resumed later at the office, between Mr. Fish and myself.

Q. When did you first see Mr. Fish on the day

of that meeting? A. He came to the office with his wife, I think; I won't say whether that was the time or the next time; he came but once with his wife, and I took her to the house, or she was sent to the house and Mr. Fish remained at the house until dinner time.

Q. What did you do at that time with reference to the book or the examination of the accounts? A. I think at this time that Mr. Fish was—well, I was busy ouside, and I left him with Mr. Coleman—and he spent most of his time—we went up to the house with Mr. Coleman going over the books.

Q. Then you went to the house with him? A. Yes, sir.

Q. You had dinner with him there? A. Yes, sir.

Q. Mrs. Fish and your wife were there? A. Yes, sir.

Q. And what happened after dinner? A. We went to the front room and commenced to talk business, and this meeting was called, and Mr. Fish and I sat in one corner of the room and the ladies were either talking among themselves or else they went upstairs. My wife had a dressmaker at that time, and I think she took her upstairs, and they did not pay any attention to us; and then after, we talked some affairs over. I showed him the figures that I had in the pass-book—different amounts to verify some of these accounts; we went to the office then and stayed two or three hours; opened the safe and went over most of the books, and looked over various things, and Mr. Fish asked questions and I explained as well as I knew how.

Q. Did you make any examination or inspect your own drawing account? A. I undoubtedly did, because I told him what the figures were at the

house, and there was a slip or two in the drawer that probably had not been charged up—that had been lying there for a while. We checked it over at the office along with some other affairs.

Q. At that time did you make any examination of the minute book? A. To my recollection, the minute book was taken out; yes, sir, we took it out of the safe and went over the minutes of the previous meeting, and I wrote the affairs, or I made a memorandum of what transpired at that meeting.

Q. When did you make that memorandum? A. At that time—that night.

Q. That is, you made the memorandum on separate sheets of paper? A. Yes, sir.

Q. When did you actually write the alleged minute in the book? A. Sometimes those were kept in this book for a week or two or a month.

Q. I observe that the amount which is supposed to be entered there is blank; how do you account for the absence of any amount in that blank space? A. Well, it is neglect to fill it in; or the bookkeeper was away, or for some reason or other I could not get the right amount, for the reason that it might have been that Mr. Coleman was not there at the time.

Q. Did you subsequently talk with Mr. Fish about that blank space? A. Mr. Fish and I—he had spoken of that to me, and said that it should be the amount inserted——

Q. Why didn't you insert the amount there? A. That is more neglect than anything else.

Q. The next minute that you find in the book before you is the minute of September 30, 1909; what is the amount that should have been inserted in the blank space, if you know? A. I don't know the exact amount; that will have to be referred to the book.

Q. Could you state the amount that should be referred, by reference to the books? A. I don't think I can.

Q. Could you tell by reference to "Exhibit X," account of A. Gould Harrison, annexed to page 41 of minute book? A. Yes, sir.

(Mr. Maxson examined the book.)

The Court Why is it marked "Exhibit X," who is it marked "Exhibit X" by?

Mr. McCarter: I don't know; it has always been in the minute book ever since I have had any acquaintance with it.

The Court: I guess that is not your mark, Mr. Stenographer.

By Mr. Maxson:

Q. Whose handwriting is that in? A. Mr. Tichenor's, the bookkeeper's.

Further direct:

Q. What is the amount?

Mr. Maxson: I object to the witness making any statement from this memorandum which is not proved. Mr. Tichenor was on the witness stand and his evidence might have been taken.

By the Court:

Q. Do you know what that paper is, that exhibit, do you know where it comes from? A. It is an account of my own, personal account.

Q. Who made it up? A. Mr. Tichenor.

Q. Did he make it up by your direction? A. This was made up by directions of counsel.

The Court: I guess you had better have Mr. Tichenor prove that later, Mr. McCarter. The objection will be sustained.

Direct examination (Continued) by Mr. McCarter:

Q. I will depart from the question of the minutes until Mr. Harrison gets back. How soon did Mr. Fish become a director of the company after he became the holder of some of its stock—right away? A. Shortly after it was——

Q. Then he became president? A. He was elected president September 22, 1903.

Q. And the other two directors were yourself and your wife? A. Yes, sir.

Q. And that has been the situation down to the present time? A. Up to 1910, approximately.

Further direct examination by Mr. Harrison:

Q. I call your attention to "Exhibit C-A-4," an account of A. Gould Harrison, and ask you if you can tell from an inspection of that acocunt the amount that should have been inserted in the blank space in the minutes of September 8, 1908— A. Yes, sir, I can state by this.

Q. What is that amount? A. $2,016.55.

Q. Does that amount appear on the ledger account as a credit? A. Yes, sir.

Q. Under what date? A. July 30, 1908.

Q. I call your attention to the next minute in the minute book, dated September 30, 1909, and ask you in whose handwriting you find that minute? A. Mr. Fish's.

Q. Do you know the circumstance of the passage of that resolution? A. It was agreed by Mr. Fish and myself that——

Mr. Maxson: I object to any general statement about an agreement; let us have the conversation.

Q. Did you have a conversation with Mr. Fish concerning the substance of that resolution prior to its entry? A. Yes, sir.

Q. What was said? A. It was said that we should each draw a salary of three thousand dollars a year.

Q. When did that conversation take place, if you know? A. I am not positive whether it was just before or at this time that it is dated.

Q. It may have been after? A. Yes, sir, or it may have been before.

Q. That is your signature affixed to the resolution? A. Yes, sir.

Q. And that is Mr. Fish's signature? A. Yes, sir.

Q. I call your attention to stockholders' meeting July 19, 1910, and ask if you acted as secretary at that meeting? A. Yes, sir.

Q. I call your attention to resolution of annual meeting of directors July 19, 1910, and ask you if you were secretary of that meeting? A. Yes, sir.

Q. What resolution, if any, was passed at that meeting relative to withdrawals previously made by you?

Mr. Maxson: Objected to; the minute book is in evidence; it is the best record.

The Court: There may have been a resolution—he was present there.

Mr. Maxson: I object on the further ground that the question is leading.

The Court: I think the question is in proper form and directed towards a very important phase of the case. I will allow the question. Note the objection.

Q. Was there a resolution passed in regard to withdrawals at this meeting?

Mr. Maxson: I object to this on the ground that it is leading, and because the minute book is the best evidence of the resolution.

A. Yes, sir, there was a resolution.

Q. On what page of the minute book do you find that resolution, and what is the resolution?

Mr. Maxson: Then, if the minute is in the book, the previous question is all the more objectionable and the answer, and I move that they be stricken out.

The Court: I will let them stand for the present.

By the Court:

Q. Is that in the book? A. Yes, sir, it is on page 41.

Q. The resolution is there, is it? A. Yes, sir.

The Court: You need not take the resolution down, Mr. Stenographer.

(Resolution read.)

Mr. Maxson: What is the date of that minute?

Mr. Harrison: July 19, 1910.

Q. From what source was that "Exhibit X" obtained? A. From the bookkeeper.

Q. At whose request? A. I wish to correct my statement. Now, before this meeting or at this meeting, I asked the bookkeeper to prepare this statement, and he prepared it from my direction and handed it to me, and I must have pasted it in here, as I was the secretary.

Further direct:

Q. What was the first time that Mr. Fish raised objection to withdrawals by you and appearing on

the books? A. January or February or March; along there sometime, 1910, I think.

Q. What conversation did you have with Mr. Fish concerning those withdrawals at that time? When Mr. Fish first made objection to these withdrawals, in what way did he bring it to your attention? A. He made no objection at that time; I don't know whether it was that time or a later time; that was after we had had a little trouble, and he said then that I was to clean up the whole matter; if he said I made a payment to the concern of $1,000 it would settle all the trouble about the withdrawals.

Q. Is that the only trouble you had with him? A. No, sir.

Q. What other trouble did you have with him? A. He made a demand——

Mr. Maxson: I object to any demand—let us have the conversation.

The Court: It is too suggestive to the witness.

Q. What other troubles did you have with Mr. Fish? A. Well, they were very numerous.

Q. State one other trouble that you had. A. The main trouble was, that he wanted to be more in authority; he wanted an equal representation on the board of directors; he wanted his son-in-law to be a director.

Q. And what did you say to him? A. I refused him.

Q. What did he say to you? A. I cannot state that, but I know he was indignant; I cannot recollect what it was.

Q. Did you have any conversation with him on the same point at a subsequent time? A. It was more friendly the time before——

Q. I mean after that time when you refused the son-in-law admission to the board of directors; did you afterwards have any conversation with him upon that subject? A. I think I did.

Q. What did he say about it when you refused him? A. (No answer.)

By the Court:

Q. In the first place, why did you refuse him? A. The question came up as to my drawing account, and I told him that I did not owe the concern a cent, but this was an agreement that he and I had had; he understood it, and I said I did not owe the concern a cent, because I did not owe it to them, and that I would not listen to anybody else's coming to make a fourth party; I refused to allow a fourth party in.

Further direct:

Q. Prior to his making this demand for equal representation, had he raised objection to these withdrawals? A. No, sir, he did not raise any objection.

Q. And how frequently, after he said he wanted equal representation on the board of directors, did he make objection to those withdrawals of yours; after he made demand upon you for equal representation, he said to you, "What about your withdrawals?" You refused to give him equal representation, as I understand it, and you refused to pay him $1,000 in settlement of the alleged claim that the company had against you; now, what else did you say to him?

The Court: He did not say that; he said about owing the company $1,000; he did not say anything about refusing to pay him $1,000. Strike that question out.

A. Mr. Fish suggested that I pay the concern.

Q. What did you do in reply to the suggestion of Mr. Fish that you pay $1,000 into the concern? A. I told him that I did not owe the firm any money —that this was an agreement—this drawing account of mine was per an agreement that he and I had—there was an understanding, and I did not consider that I owed him a cent; it had always been agreeable to him before; but just since this trouble arose is the only time he expressed any dissatisfaction.

Q. What do you mean by "this trouble"? A. When he demanded equal representation.

Q. Were you present at a meeting in my office in the latter part of March, 1910? A. Yes, sir.

Q. Who was present there? A. Mr. Fish—and his former attorney, Knowles; it was either Mr. Knowles or Mr. Taggert; I think it was Knowles.

Mr. Maxson: Mr. Taggert was a member of the New Jersey Bar.

A. (Continued.) Mr. Fish and Mr. Swallow and my brother and myself were present; we were all there in the office.

Further direct:

Q. Was anything said at that time about equal representation on the board? A. Yes, sir.

Q. What was said? A. Mr. Fish demanded that he be given equal representation on the board.

Q. What did you say? A. I refused.

Q. Who refused for you? A. My attorney.

Q. Who was that? A. J. H. Harrison.

Q. And you were all present in the room? A. Yes, sir.

Q. Do you remember then what was said by Mr. Fish or in his behalf; do you recall the exact words that were said? A. No, sir, I do not.

Q. Was any suggestion made about liquidation? A. Mr. Fish suggested liquidation.

Q. Was it anything stronger than liquidation? A. He wanted to throw the firm into bankruptcy, or have a settlement, or throw them into bankruptcy.

Q. I show you certificate of stock No. 14 to your order for certain shares of stock of the corporation; did you receive that certificate? A. Yes, sir.

Q. When was that certificate signed by Mr. Fish as president? A. At a meeting in your library.

Q. Had you previously suggested to him that he sign that certficate? A. Yes, sir.

Q. What did he say? A. He refused to sign it until I would listen to equal representation on the board.

Q. And when you went to that meeting that day what was the first thing that was touched upon? A. Stock—the stock.

Q. That certificate? A. Yes, sir.

Q. Did you then demand the signing of that certificate? A. Yes, sir.

Q. Was it immediately signed by Mr. Fish? A. It was signed very shortly.

Q. Were there any other preliminaries which he required you to go through before he signed it? A. Yes, sir.

Q. Did you execute anything as a preliminary? A. I think we executed some papers as to the signature of Mr. Beyea and his wife as to the indorsement on the other stock; the shares of stock which were purchased by me, and for which the certificate I now hold was substituted.

Mr. Harrison: I offer the certificate.

Mr. Maxson: No objection.

Marked "Exhibit D-5½."

Q. I call your attention to "Exhibit D-A-2," check for $115 to your order, and ask you the circumstances under which you received that check? A. During my absence Mr. Fish had sat down at my desk and found some unpaid bills there, and on my return to the office he mentioned the fact to me that it was not good business to let those little accounts to go, and I ought to settle them up. I told him at the present time we were particularly short of funds and the bills were not very old and they could wait, and he said, "Well, I wish you would pay them and get them out of the way; I want to get those little things cleaned up;" and I said, "I don't think I have got the money; I am short;" and he said, "Well, tell the bookkeeper to draw a check to your order," and the bookkeeper did so; the bookkeeper made out this check, and I signed it and handed it to Mr. Fish, and he signed it in my presence, and I deposited it in my account and settled the bills.

Q. How soon after the check was made out by Mr. Tichenor did you and Mr. Fish sign the check? A. There was only four or five minutes between.

Q. Who gave the bookkeeper the amount of the check? A. Mr. Fish had figured over the bills himself; I thought it was very unusual that he would help pay my bills that way, and I know he had the amount and gave it to the bookkeeper, and he said "Make a check out for Bert."

Q. Where was the minute book of the corporation kept? A. In the safe.

Q. In what part of the safe? A. In the lower part of the safe, where we kept our cash book and ledgers.

Q. How long had it been kept there? A. Always.

Q. Have you ever seen Mr. Fish looking over that minute book? A. Yes, sir.

Q. What is the first time you saw him looking it over? A. I think the first time was in 1903, at the meeting at Elm Street.

Q. And when was the next time you saw him, so far as you can recall? A. Why, at every meeting we held he would look over the minute book or look over my memorandums and suggest sometimes some corrections in my work, as he seemed to be more familiar with writing motions and resolutions than I was; and he would run the meeting; there was hardly a time when he came out there but he would see the minutes of the previous meeting, and probably would turn over a leaf or two at other meetings.

Q. And you have seen him do that? A. Yes, sir.

Q. On how many occasions? A. Numerous occasions.

Q. Did he ever talk with you about the minutes? A. Yes, sir.

Q. Did he ever talk with you at times other than at times when he came out there for the purpose of attending a meeting? A. About the minutes?

Q. Yes. A. Only this one particular minute.

Q. What particular minute? A. Minute of November 18, 1905.

Q Have you ever seen him with the minute book in his possession, in his physical possession, apparently looking it over? A. I have seen him look it over at times for sometimes fifteen minutes or a half an hour or an hour.

Q. Will you explain the custom of the Harrison Milling Company in the matter of the keeping of some debits on these so-called slips? A. The ledger account, or the cash received was, of course, never put on the slips, but Mr. Fish's drawing account was kept during the year on a slip kept by the bookkeeper; I never had anything to do with

the books myself, but these slips were kept by the bookkeeper in the safe with Mr. Fish's slips and my own, and at that time we were not very flush, and if I would make a loan, my wife or some friend, a loan to the firm, where I would pay it up and would want to square it up in a few days, and it would be put on the slips so that credit was exhausted; I would borrow $1,000.

Q. How early did that custom start? A. It started at the inception of the business in 1899.

Q. And is it still kept up? A. It is.

Q. I show you a check introduced in evidence, signed by you, dated September 18, 1906, to the order of the Harrison Milling Company for the sum of $2,000, and I ask you what was done with that check and why was it given? A. The proceeds came from the sale of some property and this check was given to the firm, this check was given to buy the Beyea stock, and as the firm was a little short, I did not know how soon I would be able to get stock, and instead of borrowing the money from the bank I put it in the firm and let them use it, and deposited it in the bank in the company's account until such time as the firm would pay me back, and it was put on the slip, and Mr. Coleman —I can see the picture before my eyes now——

Mr. Maxson: I object to that.

By the Court:

Q. Have you seen the slip since? A. Yes, sir, I saw the slip in the drawer.

Further direct:

Q. Who made out the slip to which you have just referred? A. Our bookkeeper, Mr. Coleman.

Q. What has become of that slip, if you know? A. In all probability the slip has been destroyed.

Q. Do you know anything about the slip—do you know whether it is in existence or not? A. I cannot find it.

Q. What is your custom in the matter of these slips?

Mr. Maxson: He has already testified to the custom.

The Court: No, he has not.

A. After that amount had been used up——

Mr. Maxson: Objected to as not responsive.

By the Court:

Q. What was the custom in regard to the slips after payment? A. Destroyed.

Further direct:

Q. Did you ever inform Mr. Fish of the giving by you of this check to the corporation? A. I did.

Q. When? A. I think that check was given in September and along in October or November I told him I had paid this money in the concern to use until such time as I could buy the stock, rather than to borrow it from the bank, as we needed the funds.

Q. What did he say about it? A. He made no objection, and said that when the time came that we could buy the stock; if we did not have the money in the firm, if he could help me out he would be glad to do so, as he wanted me to get the stock.

Q. Had he previously urged you to get the stock? A. Yes, sir, on several occasions.

Q. Was reference ever again made to this matter to Mr. Fish? A. Each time that he would come out there, because he seemed to be as much interested in my getting the stock as I was myself; we would talk over the finances of the concern, and

I made mention of this fact that this money was in there waiting to buy the stock, and the concern owed me the money; then I asked Mr. Fish, as we did not have any surplus funds in the concern, that if he would indorse a note or arrange to get some money for me, and he said that I should get it, the best way to get it was, as I always had, through my firm note with my wife's indorsement.

Q. And when did you buy the Beyea stock? A. It must have been six or eight months after that check was given.

Q. I show you check, "Exhibit C-5," to the order of C. F. Heff, Cashier, for $462.68, signed by the Harrison Milling Company, A. Gould Harrison, Treasurer, and I ask you if that will serve to refresh your memory as to the date when you purchased the stock? A. Yes, sir; I remember the occurrence was on February 15, 1907.

Q. And to whom was that check given? A. Given to Heff, cashier of the Staunton Bank, where the stock of the Harrison Milling Company that Mrs. Beyea held in the bank there was on a collateral loan.

Q. And the payment was made to the cashier at Mrs. Beyea's direction? A. She was with me there; that was the amount of the loan and interest on the stock.

Q. I show you check, "Exhibit C--4," February 21, 1907, for $337.32, made by the Harrison Milling Company to the order of Ida M. Beyea, and I ask you for what was that check given? A. That was given in part payment on account of the stock.

Q. Held by Ida M. Beyea? A. Yes, sir.

Q. I call your attention to "Exhibit C-7," the same being a check of the Harrison Milling Company to the order of Ida M. Beyea, February 21, 1907, for $1,000, and I ask you the circumstances

of the giving of that check? A. That was on account of the stock; this was in full to balance it up—the purchase price of the stock.

Q. I call your attention to check of the Harrison Milling Company to the order of Ida M. Beyea, February 15, 1907, for $90, and I ask you for what purpose that check was given? A. That was given for one year's interest on stock.

Q. Was that the consideration of the stock? A. Well, now, we made one payment—there was one
20 resolution where all the stcokholders received their interest, and this one, I think, was in the form of a premium on the stock.

Q. What do you mean—on the sale of the stock? A. Yes, sir.

Q. Which you had to pay to Mrs. Beyea?

Mr. Maxson: Objected to as leading.

A. Over par, I mean.

Mr. Maxson: It is not fair to ask these leading questions.

Mr. Harrison: I want to hurry the thing
30 along.

Q. I call your attention to a check made by the Harrison Milling Company, February 16, 1907, "E. M. Beyea," $80.00, and ask you for what purpose that check was given? A. That was the premium or the amount above par for E. M. Beyea.

Q. On the shares of stock held by him? A. On the four shares of stock held by him.

Q. After those payments were made, when were they entered upon the records of the corporation, if at all? A. These payments of these checks?

40 Q. Yes.

Mr. Maxson: I object to that.

Q. What notices, if any, were made either upon the books of record or upon the slips, or upon the bank books of the corporation? A. The entries were made by the bookkeeper, Mr. Coleman, and the par value of the stock, $1,500.00 was charged.

Mr. Maxson: This is not responsive; I object.

By the Court:

Q. Where— A. Some were made on the cash book and some against the slips.

Further direct:

Q. Did you inform Mr. Fish of the fact of the purchase of this stock by you? A. I did, yes, sir.

Q. When did you tell him? A. As soon as I returned from Scranton, I either went over to New York—I told him immediately—I also told him how the transaction was made, and I borrowed the money for it.

Q. Did you tell him the checks of the company had been drawn in that way? A. Yes, sir, I explained what check I left out there.

Q. What did he say? A. He made no objection; he said it was all right and approved of it.

Q. Did you have anything to do with the form of entry of this transaction in the books of the corporation? A. Nothing at all—Mr. Coleman had that.

Q. When was your attention first drawn to the method of closing this account? A. I think it was at the time his auditor was there.

Q. Did you know up to that time how that was shown on the books of the corporation? A. I don't think I did.

Q. How long were those checks in the possession

of the office at Montclair? A. They have been in the possession of the office—they were in possession of the office until Mr. Fish's auditor was there, and during that time, some day, we looked for these checks afterwards.

Q. And did you find them? A. No, sir.

Q. Had you seen the checks from the time of the departure of Mr. Nasmyth and the trial of this case? A. No, sir.

Q. I call your attention to a bundle of checks and notes made by the Harrison Milling Company, aggregating 21 instruments, and ask you if they are papers belonging to the Harrison Milling Company?

Mr. Maxson: I don't see any purpose in this —we had them—the Court knows it.

By the Court:

Q. When did you see them last? A. Previous to Mr. Nasmyth's audit; I could not find them after he left, and I have not seen them until now.

Further direct:

Q. Did you have any conversation with Mr. Nasmyth concerning your check of $2,000 to the order of the company? A. I did.

Q. What conversation was it, or did you have? A. Mr. Nasmyth, in making his audits——

Mr. Maxson: I object; let us have the conversation.

Q. Merely what he said to you or you to him? A. (No answer.)

By the Court:

Q. What did you say to him about it? A. He came to me and he asked me in relation to the

stock—where the money came from to purchase this stock, and I told him I had drawn a check to the Mill Company's order for $2,000, and showed him the stub of the check-book with the amount on it, to the order of the mill, and I told him I would produce the check if he wanted it, and he said it was unnecessary.

Further direct:

Q. Did you ever know of Mr. Fish signing checks in blank? A. Never.

Q. Some reference was made to credit extended by Mr. Fish from time to time to the Harrison Milling Company; what, if any credit, was so extended? A. If I remember correctly, there was a loan made to us for two or three thousand dollars, which we gave them a note for a short period; the note was paid.

Q. Did you have a line of credit in New York? A. I went over to New York with Mr. Fish; we obtained a line of credit from a bank there for the company on drafts to the amount of—the first time, it was eight or nine thousand dollars, maybe ten thousand or eleven thousand dollars.

Q. That credit was extended on the basis of what? A. The cashier told us at that time that if we would bring the company's account to New York he would give us all the accommodation we needed.

Q. Did you ever say to Mr. Fish that you had overdrawn your account to the extent of eight or ten thousand dollars? A. No, sir.

Q. Did you ever say you had overdrawn to any extent? A. I did not.

Q. During what period, if at all, did Mr. Fish take charge of the purchase of grain for the corporation? A. Well, I used to give him orders

for what was wanted,, and he would buy them for us, and I don't know exactly the period, but he is still buying for us to-day.

Q. Do you know at what rates he is charged for goods sold to you?

Mr. Maxson: I object to that.

Mr. Harrison Mr. Fish testified that this was shipped to the company without making one dollar profit.

The Court: I will allow it.

Mr. Maxson: Let us have a basis laid for it by establishing his expert knowledge of the prices of grain and all that sort of thing; I do not want to have any haphazard statement.

Mr. Harrison: I will pass it; it is not important.

Q. Do you remember when Mr. Fish ordered the books of account of the company to be placed in charge of the Bank of Montclair? A. Well, about —I don't remember exactly the time.

Q. Well, approximately? A. Yes, I remember it, but I do not remember the time.

Q. Can you fix the year? A. It was the year that he came to Montclair.

Q. How long after his permanent coming did he order the removal of the books? A. I could not fix that.

Q. Did he state the purpose for which he wanted them removed? A. He was afraid they would be destroyed, burned up by fire, because they were kept outside the safe, and there was not room for them in the safe.

Q. Turn to page 30 of the minute book; was that minute in the book——

Mr. Maxson: What is the object of that?

Q. (Continued.)—September 8, 1908? A. That is the one you have reference to.

Q. Was that minute in the book as it is, at the time of the entry by Mr. Fish of the minute of September 30th, which immediately follows? A. It certainly was.

Q. Did he ever say to you anything to the effect that that minute was not there at the time he made the entry of his minute? A. No, sir.

Q. When was the first time you heard about it? A. At the hearing, I think——

Q. What line of credit did your wife have at the Bank of Montclair?

Mr. Maxson: Objected to; what is the object of that question; what is the relevancy and materiality of it?

Mr. Harrison: We are going to show that the wife's credit was used to finance this company for some time.

The Court: I do not think it is material.

Cross examination by Mr. Maxson:

Q. You say that Mr. Fish, at the inception of his connection with this corporation, wanted to make it a loan? (Question withdrawn.) Mr. Fish wanted to make a loan when he first came out to see you about going into this corporation? A. When I went in to New York to see him after his son had been to the office.

Q. His son came out and told you that his father wanted to make you a loan? A. Yes, sir.

Q. And had you had any previous conversation with Mr. Fish or his son about a loan? A. The first time his som came out, and I met Mr. Fish in New York after seeing his son at the office.

Q. You had not told him you wanted a loan for this company—either Mr. Fish or his son? A. I told Fred; I told Fred that Mr. Mullen was dead

and we had to have a little more capital, and he said he would speak to his father and see if he wanted to loan us anything on stock.

Q. And after you had told him that you needed some more capital, then you went in to see Mr. Fish for the purpose of getting a loan? A. The purpose of that meeting was—I took along some statements concerning the business, as to the condition, for the purpose of talking with him regarding——

20 Mr. Maxson: I cannot cross examine this witness if he is going into these rambling discussions.

A. I went in see Mr. Fish for the purpose of getting this loan and explained to him the condition of the business.

Q. And at that time you told him you needed some money, of course? A. Yes, sir.

Q. And you told him all about the condition of the business? A. Yes, sir.

Q. How long were you in there? A. It is so long
30 ago I cannot tell; it must have been an hour or two.

Q. And you went and had lunch together? A. Yes, sir.

Q. And you talked it over at lunch? A. My recollection is, that I went to the office at first, and then went to lunch.

Q. And you talked it over at lunch? A. Yes, sir.

Q. How much money did you tell him you wanted? A. My recollection is, about three or four thousand dollars.

40 Q. And he told you he would let you have it? A. Yes, sir.

Q. As a loan? A. Yes, sir.

Q. You were to do what—give some stock as collateral? A. Yes, sir, 40 shares.

Q. And you gave it to him as collateral? A. Yes, sir.

Q. About what was the date of this conference? A. I could not say as to that.

Q. Well, can you fix it by this: how long previous to when Mr. Fish came into the company actively? A. Two or three weeks or a month; I would not be positive of that.

Q. Did he tell you at the time you asked him for the loan and when you said you would put up your stock as collateral that he wanted to be made an officer and a director of the company? A. It was not spoken of at that time.

Q. How soon afterwards did he tell you he wanted to be made an officer and a director? A. I think it was at my suggestion that he was made president when he came out there—at Elm Street.

Q. That was in 1903? A. Yes, sir.

Q. About a month after this conference? A. I should say in that neighborhood; I would not say positively.

Q. Now, he said something about looking into the affairs of the company before he made this loan, didn't he? A. Yes, sir.

Q. Did he say he wanted to examine the books? A. He said he wanted some statement; he wanted to come out there and look them over.

Q. Before advancing any money he wanted to look the books over? A. Yes, sir.

Q. Did he come out and look the books over before he advanced any money? A. My recollection is that—I left some statements with him.

Q. Did he come out and look the books over? A. Yes, sir, he did.

Q. Before he advanced any money at all? A.

I would not say positively whether he did or not, I think he did.

Q. Didn't he send you a check for $2,000 before he ever made any examination of the books whatever? A. He came out one afternoon, and he had his son with him.

Q. When? A. Previous to his making the loan, I think it was.

Q. Do you know that as a fact? A. It is so long ago that I cannot fix a date.

Q. What was the date of the check? A. I don't know.

Q. How long was it previous to his coming into the corporation? A. I don't know, I could not tell you.

Q. But you do know—you recall very well that he came out before he had paid any money and wanted to see the books? A. He came out and spent an hour there, an hour or two with him there, and was with Mr. Coleman, the bookkeeper.

Q. With the man who is dead? A. Yes, sir, and I would not say whether it was before or after the check, but it was all done within two or three weeks.

Q. You won't say it was before he sent the check, then?

Mr. McCarter: He has said that he thought it was before.

Q. Now, at that time you called his attention specifically to this drawing account of yours, didn't you? A. I explained it to him, yes, sir.

Q. You told him all about it? A. I told him the conditions I had had previously.

Q. You told him how you were to have all the money you needed out of the income of this corporation? A. What the business could stand.

Q. That was all to be determined by your good judgment, wasn't it? A. That was the understanding.

Q. But if Mr. Fish came in, it was your good judgment that was to determine how much money you were to draw in excess of your salary? A. He agreed to leave it to me.

Q. Any amount you wanted you might take? A. Yes, sir, that the business could stand.

Q. How much did you take then? A. I would have to look at the books to verify that.

Q. Can not you tell, approximately, how much you took in excess of your salary? A. No, sir; I knew at the time, but I don't know now.

Q. How did you take it? A. In various ways, checks and cash.

Q. Any way you wanted it? A. Sure.

Q. And any amount you wanted? A. No, sir.

Q. Any amount there was in the cash drawer or in the bank? A. No, sir.

Q. How did you determine how much you would take? A. What I needed for personal use.

Q. Any amount you needed for your personal use? A. What was necessary for my personal use —I will put it that way.

Q. Or for the use of your household? A. Yes, sir.

Q. Or for your club? A. Yes, sir,—that is personal.

Q. Or your horse and carriage? A. Before that time, I owned my own rig.

Q. The livery stable bill was paid out of the funds of the company? A. Yes, sir.

Q. Now, the first meeting of this concern after Mr. Fish came in, was in 1903, wasn't it? A. I think so.

Q. And it was at your house? A. Yes, sir.

Q. And Mrs. Harrison was present and you and Mr. Fish? A. Yes, sir.

Q. At that time you told Mr. Fish about these withdrawals? A. I explained it to him, and I told him——

Q. You told him how much you were in default? A. I did not tell him I was in default any; I called it a drawing account.

Q. Did you tell him how much your drawing account was at this time? A. I think that I either gave it to him from a slip or my pass-book—the amount of it.

Q. You had a book in your pocket with it all down? A. Either a book or a slip.

Q. And in order to verify your statement, you took him down to the mill and showed it to him on the books down there? A. Yes, sir.

Q. How much was the amount? A. At that time it was $1,300 or $1,500.

Q. Did he say anything about crossing it off, or anything like that? A. At that time I don't think there was any mention made of crossing it off.

Q. Just let it stand on the books? A. Yes, sir.

Q. As an overdraft? A. Yes, sir.

Q. When did he first mention crossing the overdrafts? A. I would not say just the time of it, but it was when the amount got to the amount that is stated in that resolution of October 18, 1905—it was previous to that; a month or two before.

Q. That was two years later? A. Yes, sir.

Q. And then it was at Mr. Fish's suggestion that you held a meeting and passed a resolution? A. Yes, sir.

Q. And it was put down in business form? A. Yes, sir.

Q. Though all the time Mr. Fish had known all

about the overdrafts? A. I suppose he knew; I told him.

Q. He knew you would continue to draw money there up to nearly $5,000 in excess of his salary? A. Yes, sir, he knew that.

Q. Then, you went to Mr. Coleman and got the amount of your overdraft? A. In all probability, the bookkeeper gave it to me.

Q. Well, you went and asked him for them? A. Probably.

Q. Then you showed them to Mr. Fish, and he said they were all right, and to go down and have your brother draw up a minute? A. He advised to have the minute drawn by my brother, and the proper amount, and I did it, and my brother drew it up in legal form.

Q. What was the date of that minute? A. 1905.

Q. Had you entered any minute previous to that about overdrafts, in this minute book, or had one entered? A. I could not tell until I saw the minute book whether I had or not.

Q. But you had been making overdrafts right along previous to that time? A. Those were not overdrafts—those were my drawing accounts.

Q. You had been having a drawing account in excess of your salary right along? A. Yes, sir.

Q. Had you entered up any resolution about crossing off overdrafts? A. I don't know.

Q. You never made any suggestion that any minute be entered? A. Mr. Fish was familiar with the conditions, and he had suggested a number of times——

The Court: Answer the question; the answer is not responsive at all.

A. I did not make the suggestion; Mr. Fish did.

Q. Had you ever thought about entering a minute

to cross off your drawing account, as you call it, in excess of your salary? A. I never thought about it; the only way I can answer that, is that I considered there was a drawing account and an arrangement with Mr. Fish, and was thoroughly understood, and that after the account got to the amount of around four or five thousand dollars, Mr. Fish suggested that we insert on the minute book in proper form, charging that off.

Q. And that was to be done by your brother? A. Yes, sir.

Q. And he waited until it got to a reasonable amount like four or five thousand dollars, before he did? A. This resolution was suggested by Mr. Fish to charge off this amount, and the minute be prepared by my brother, so it would be in legal form, and was then spread upon the minutes.

Q. Was it done in your handwriting or your brother's? A. The minute on the book is in my handwriting.

Q. Now, there is not any minute in this minute book previous to that one of November 18, 1905, crossing off any of your drawing account, as you call it? A. You say there is not.

Q. You know whether there is not? A. I don't know until I look over the book.

Q. You had not thought it necessary to ever enter a minute? A. I did not think it was necessary.

Q. Then, how did you keep track of the amounts that you overdrew? A. The bookkeeper kept those memorandums.

Q. How often did he give you a statement? A. Every time I would ask him.

Q. And unless you asked the bookkeeper for that statement as to how much you had drawn in ex-

cess of your salary, you did not know? A. I generally knew from month to month; it is my custom generally to look over the ledger once in a while.

Q. Now, there is a minute in here dated September 2, 1907,—you recall that minute, don't you, and the meeting? A. I recall the minute in the meeting, yes.

Q. And who were present? A. I think Mr. Fish and myself, and I could not say positively whether Mrs. Harrison was there or not.

Q. And it was held where? A. I won't say where that meeting was held, because so many times they were started at the house and then we would go to the office; I cannot say whether it was at the house or the office; there was no note made on the minute where it was held.

Q. But, according to your direct testimony, you think it was held somewhat later than this time? A. Yes, sir.

Q. Somewhere in October or November? A. Yes, sir.

Q. How about the meeting of September, dated September 8th? A. The one was the directors' meeting and the other was the stockholders' meeting.

Q. The minute of one follows the other in the book; when was the meeting of the Board of Directors? A. I cannot tell you the time; it probably was a short time after that meeting.

Q. A short time after this meeting? A. Yes, sir.

Q. Along in October or November? A. I cannot tell you the date.

Q. How about this meeting of September 30, 1909?

Mr. Harrison: Let him see the book.

(Witness examines the book.)

A. This meeting?

Q. Yes. A. I think that was held after; some time in October or November, probably later.

Q. You don't remember just when? A. No, sir.

Q. These minutes are both entered in your handwriting, are they not? A. Yes, sir.

Q. And this minute seems to have been approved when? A. According to the memorandum, it is approved 9/2/1907.

Q. Marked "approved" in the minute book the 20 same date? A. Yes, sir.

Q. Did you do that during all the time you kept the book? A. Sometimes I would take the book and look it over.

Q. You thought it was proper to do it? A. Yes, sir; I looked previously here and saw where our members separately had marked it "approved."

Q. Now, there is an overdraft crossed off there at that meeting of September 2, 1907, $386.74? A. Yes, sir.

Q. And you got those figures from the secretary? A. Yes, sir, he was then bookkeeper.

30 Q. Mr. Coleman? A. Yes, sir.

Q. And presented them to Mr. Fish? A. I don't know whether he presented them at the time of the meeting; I asked the bookkeeper what the amount was to August 1st, and he gave us this amount at the meeting.

Q. Did Mr. Fish say anything about drawing up the resolution at all—having your brother draw it up? A. Not that one.

Q. He did not want to have that in legal form? A. We thought after we had this it might give me a little teaching in it.

40 Q. But you did not follow the form in drawing that; did not think it was necessary? A. It shortened it up.

Q. You are quite sure Mr. Fish made the motion? A. Yes, sir.

Q. He came there and made a motion to cross off another one of your overdrafts, voluntarily? A. Yes, sir.

Q. He came voluntarily? A. Yes, sir.

Q. And moved to cross your overdraft off? A. $386.74.

Q. And you thereupon prepared the resolution yourself? A. Yes, sir.

Q. And put it in the book? A. Yes, sir, and read it to him before it was placed in the book, and afterwards, too? Q. Now, these figures included all your overdrafts up to that time, didn't they? A. I presume so.

Q. Do you know? A. Only what the bookkeeper advised me; those are the figures he gave me; he was competent enough to attend to these matters—when I asked him a question, I thought his answer was near enough to be right.

Q. Mr. Fish, I suppose, verified the overdrafts, did he, or did he take your word for it and the bookkeeper's word? A. He had explicit confidence in the bookkeeper.

Q. Then he did not go down and examine the books on this occasion? A. Possibly before the meeting—he would come out before the meeting was called and would talk with the bookkeeper pretty nearly every time.

Q. And look the books over? A. Yes, sir, he would look over some accounts.

Q. Then it was his invariable custom to go and examine the books before he agreed to cross off any overdrafts? A. He always wanted to know something about it, what the amount was.

Q. And he would go and look for himself? A. No, sir.

Q. Would he take your word for it? A. He has taken my word for it.

Q. How many times did he take your word for it? A. I cannot say.

Q. On what other occasion did Mr. Fish take your word for the amount of the overdraft, without looking it up for himself? A. I cannot state as to that.

Q. Cannot you give one occasion? A. Not to be exact about those things; because my memory does not serve me; it is so many years ago.

Q. Then, if it appears that that was not the amount of the overdraft at all, then somebody made a mistake?

Mr. Harrison: I object to the question.

The Court: Objection overruled.

Q. Did he look it up for himself? A. Sometimes he did; that particular time I would not say whether he did or not.

Q. What did he say about it,—Mr. Fish? A. At that meeting we sat at the desk and were talking about various matters, and the question of overdraft came up, and the amount was obtained from the bookkeeper; I asked him; whether or not Mr. Fish verified that at that time—sometimes he did, and sometimes he would go——

Q. You don't know whether or not he verified it at that time? A. No, sir.

Q. But it was his custom to verify those amounts, wasn't it? A. Yes, sir, almost invariably.

Q. As soon as you asked the bookkeeper, Mr. Coleman, to go and get this statement, he went and got it immediately, didn't he? A. He opened the ledger and had the amount right before him.

Q. Were all of your overdrafts entered into the

ledger at that time? A. The slips and the ledger account showed everything——

Q. And he had it right before him—so there was no reason for him to make a mistake? A. They will make mistakes; they were there at his disposal.

Q. Whenever you got any money, you put it on one of these slips, did you? A. At times they were put on the slip, and at times they were put in the cash book.

Q. Which was the custom? A. The bookkeeper was competent, and he did as he saw fit.

Q. You got him to make the entry either on a slip or in the book? A. Yes, sir.

Q. Always? A. Well, almost always; he attended to it, because I left it all up to him to attend to the cash and to the books.

Q. When you directed it, it was done that way? A. I would go and ask for so much money—and I suppose that at his convenience he would put it on the slip or charge it up; at times he would have it on the cash book and at other times on the slip.

Q. You never had anything to do with the books at all, did you, personally? A. Very little.

Q. You did not know anything about them? A. Certainly, I knew something about them.

Q. I thought you were an amateur bookkeeper? A. I am.

Q. Then you never made any entries yourself as to any of these amounts you drew? A. Possibly I made one or two, if the bookkeeper happened to be sick.

Q. How about the bookkeeper himself—when he drew? A. He put it on a slip.

Q. Did he call it to your attention? A. Sometimes.

Q. On the slip or in the book? A. On the slip.

Q. Usually called it to your attention on the slip? A. Yes, sir.

Q. Then you examined his slips? A. I saw his slips in the safe.

Q. You were treasurer of the company? A. Yes, sir.

Q. Didn't you go over these slips? A. I have gone over them.

Q. Then you knew how much the bookkeeper was drawing? A. Yes, sir.

Q. Now, since this new bookkeeper, Mr. Tichenor, came in, have you observed the manner of keeping the books and the slips, the same as you did before? A. Just the same as usual.

Q. Did you go over them once a week? A. Sometimes once a week, and sometimes not as frequent.

Q. But Mr. Tichenor knows what the system is there, doesn't he? A. Yes, sir.

Q. And what he testified to in your hearing this morning was true, as to the system? A. I imagine it is—I think he was truthful in it.

Q. Do you differ with him in anything he said about it? A. Not now—unless I went over his testimony.

Q. Well, he has testified that these slips were only entered debits; is that true? A. Not only debits, but credits were entered on these slips.

Q. And if he said that there were only debits, he was mistaken, was he?

Mr. Harrison: I object, on the ground that he is mis-stating the testimony given by the bookkeeper.

The Court: My recollection of the testimony is, that the witness did say in the start that there were only debits upon the slips, but he afterwards went into details in explaining the

slips, indicating that there were a great many items on the slips——

Mr. Maxson: I went very carefully into that matter with him to get his statement as to that fact that there were only debit entries.

The Court: To save time, we might go ahead. This witness says there were also credits on the slips.

A. What I mean to say is this, on these slips were never charges alone, credits alone,—to anybody.

Q. I mean, if anyone loaned your company $1,000, you never put a slip in the drawer for that $1,000, unless there was something else in connection with the transaction? A. We have on loans of various amounts made a slip out, credit so and so, so much money, and put it in the safe, and it never went through the books.

Q. How often did you balance your cash? A. Once a week, twice a week, oftener, and sometimes not so often.

Q. Didn't the slips go in the book when you balanced your cash? A. No, sir, I can balance cash without that.

Q. Then you had in the safe of this corporation slips representing both loans and credits—loans to members of the corporation like yourself, and the bookkeeper, and also credits to other people? A. I don't know whether you would call them loans or not——

Q. Well, payments—— A. Whatever they were —they were withdrawals or advances or whatever you call it; there would be memorandums; for instance, if, during Mr. Fish's time we would give him a check for $100.00, instead of charging on the cash book Mr. Coleman would put it on a slip,

date and amount, and leave it there to the end of the year to make one charge of it.

Q. Did you loan Mr. Fish money from time to time? A. No, sir; he was to get $100.00 a month.

Q. Would you pay him the hundred dollars and put in a slip and leave it in the drawer until the end of the year? A. Until such time as Mr. Coleman would charge it off.

Q. The same way that any loans that were made? A. Not all of them, but some of them.

Q. You were treasurer of this company? A. Yes, sir.

Q. What was your direction with respect to the entry of these things, as to whether or not they should be entered? A. Our bookkeepers have always been competent enough, and it was left to their discretion; at times I suppose I argued with them——

Q. Was it left to the bookkeeper? A. It would depend on the condition of the loan; if we had borrowed one thousand dollars from a friend of mine, we would not run it through the books; we did not destroy all the slips the first year.

Q. You had no regular custom about whether these should be transferred in the books or not? A. No, sir; it was a matter of convenience to have the slips.

Q. Can you explain the entries of these slips that are in evidence, that the bookkeeper took away with him—L. G. Dye? A. Yes, sir.

Q. What was that transaction? A. There was a check that I got from L. G. Dye, a personal matter; I turned it into the funds of the corporation until such time as I needed the money.

Q. Then when you did draw it, you drew $120.00? A. Yes, sir.

Q. What was that check for—from L. G. Dye? A. A personal matter—nothing to do with the company.

Q. What was the check for, for the Federal Trust Company? A. A personal matter.

Q. It was the company's check? A. Yes, sir.

Q. You don't want to say what you used it for? A. I could say what I used it for, if necessary.

Q. Answer the question. A. I used it in the payment of some stock of the Essex National Bank, which Mr. Fish knew all about at the time; I explained it to him; he wanted me to be a director in the bank, thought it was a good thing for the business for me to be a director there.

Q. He also was willing to help you purchase that stock, was he? A. Yes, sir.

Q. You have started another business, haven't you?

Mr. Harrison: Objected to, on the ground that it is entirely immaterial and irrelevant.

The Court: I am going to allow it for the present.

A. I don't know whether I have or not; no, sir, I have not.

Q. You have formed a corporation? A. I did not form it.

Q. You are interested in a corporation? A. Yes, sir.

Q. And where are you going to start the business of this corporation? A. The business is started at Caldwell, New Jersey.

Q. It is the same line of business as this? A. Yes, sir.

Q. The same kind of business? A. Yes, sir.

Q. How far is that from Montclair? A. Four miles.

By Mr. Harrison:

Q. Do you know about that? A. I don't know what it is, because the business is not started yet.

Q. Do you own any stock in the corporation? A. Not yet.

Further cross:

Q. Your brother does? A. I never put a cent into it yet.

Q. Your brother is one of the stockholders? A. He has not got any omney into it yet.

Q. Are not you both interested in it?

Mr. Harrison: I am perfectly ready to state on the record what the situation is with respect to the Harrison Company, a new corporation which has been formed. The gentleman in charge of this and who will finance the corporation is one Mr. Stevens. A building is in course of construction at Caldwell, New Jersey, for the purpose, it is expected, of conducting a grain and feed business, and perhaps some other business in connection. So far as I know and believe, no business, absolutely no business, has been done as yet; the building has not been completed, and the man in charge of this is Mr. Stevens, and A. Gould Harrison and I were on the certificate of incorporation primarily as dummies, and I, further, incorporated the company.

The Court You are practically through with your case now, Mr. Harrison?

Mr. Harrison: Yes, all but one witness, and she won't take long.

Mr. Maxson: I am not through my cross examination yet; I shall be an hour and a half yet, probably, with this cross examination.

Q. It is your purpose to go into this grain business at Caldwell, isn't it?

Mr. Harrison: I object to the question on the ground that it is incompetent, irrelevant and immaterial.

Q. Do you intend to go into the business there? A. Mr. Stevens is going to run the business up there; I expect to take care of the Montclair business.

Q. Haven't you a specific amount of business in Caldwell, New Jersey, which you are doing for the Harrison Milling Company, the defendant in this suit?

Mr. Harrison: Objected to on the ground previously stated, and that it is raising issues which are not contemplated within the pleadings.

Q. (Question read.) A. Yes, sir, we have some business in Caldwell.

Q. Now, you intend to go into another business, and the corporation has been formed, and you were one of the incorporators in Caldwell, New Jersey, in the same line of business as that of the Harrison Milling Company in Montclair?

Mr. Harrison: I object to that question.

The Court: The objection is overruled.

A. All I know is what my counsel explained. I intend to take care of the Montclair business, to be affiliated there and stay there. Mr. Stevens is to take care of the Caldwell business.

Q. But you are to be financially interested in the Caldwell business? A. I am not yet.

Q. But you are to be?

Mr. Harrison: I object to that; it is speculative.

Adjourned to a day to be fixed.

Amos Gould Harrison—By Defendants—Cross

On Bill, etc., Testimony.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK K. FISH,
Complainant,

and

A. GOULD HARRISON *et al.*,
Defendants.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Newark, New Jersey, on the eighth day of May, nineteen hundred and thirteen, before Hon. VIVIAN M. LEWIS, Vice-Chancellor.

Appearances:

EDWARD MAXSON, Esq., for the Complainant.

J. HENRY HARRISON, Esq., for the Defendants.

(Mr. ROBERT H. MCCARTER was not present, being absent in Europe.)

(Mr. Harrison asked for a continuance of the cause to another day, on account of Mr. McCarter's absence, which the Court refused.)

Mr. Harrison: I tried to get Miss Miller and Miss Arnold, two stenographers, and I telephoned to A. Gould Harrison last night, and I told him to be here at ten o'clock. Now, I have not seen him. I think it is unfair for the solicitors of the complainant to ask us to go on, and if they say that

they are afraid of the defendant going ahead, running off with $5,000 or $50,000, we will give them a bond of any character that they want. How much do you want, Mr. Maxson?

Mr. Maxson: Fifty thousand dollars.

Mr. Harrison: All right, we will get it for you. And the allegations of his being entirely dependent upon this business are not true.

Mr. Maxson: He so testified himself.

Mr. Harrison: It is a misinterpretation of the testimony.

The Court: The situation is very peculiar in this respect: Mr. Harrison is a brother of the defendant, and it is a difficult position for him to be put in before the Court, but if counsel insist, you had better send for Mr. Harrison.

A. GOULD HARRISON resumes the witness stand.

Cross examination (continued) by Mr. Maxson:

Q. Mr. Harrison, you recall testifying about some conversations you had with Mr. F. K. Fish—

Mr. Harrison: Just a minute, Mr. Maxson. I would like to make a reservation of the right to correct certain typographical and other errors, that may appear in the testimony, at the

The Court: All right.

Q. (Continued.) ——prior to the time when he became connected with this company? A. How long before, do you mean?

Q. I mean, before he became connected in 1903 —you saw him how many times previous to the time he became connected with the company? A. What do you mean—I saw him previous to that?

Q. How many times? A. A number of times.

Q. At what places? A. I have seen him in his office in New York, and I have seen him in restaurants.

Q. Your visit to him in New York was shortly before he took this stock, wasn't it? A. I was at his office before he took the stock.

Q. Well, it was shortly before, wasn't it? A. Some little time before; I would not say how long.

Q. At that time was there any conversation about making a loan to the Harrison Milling Company on its stock? A. Previous to his coming in, that was the gist of the conversation, that he was to make the loan on the stock.

Q. And to you individually, or to the Harrison Milling Company? A. To the Harrison Milling Company stock.

Q. The loan was to be made to the Harrison Milling Company? A. On the company's stock.

Q. But I am asking you to whom was the loan to be made—to you or to the Harrison Milling Company? A. It was not to me personally——

Q. The loan was to be made to the company? A. Yes, sir.

Q. As a matter of fact, the loan was made to the company? A. Yes, sir.

Q. And this stock was put up as collateral for the loan? A. Yes, sir.

Q. What was the market value of that stock at the time the loan was made? A. That would be a question I could not answer until I went over the statements.

Q. Cannot you say, approximately? A. No, sir.

Q. Was it worth par? A. Yes, sir.

Q. Was it worth more than par, in your estimation? A. Well, under certain conditions it was, and under other conditions, it was worth less.

Q. What were the conditions at that time which affected the value of the stock? A. It would depend on the business; if the business went on, it was worth more.

Q. You did not anticipate the business was going to stop, did you?

Mr. Harrison: Objected to on the ground that it is irrelevant, and on the ground that it is taking up issues that are not comprehended at all within the pleadings.

The Court: What is the object of this inquiry? This application is on a bill for an accounting. What is the object of taking testimony as to the value of this stock?

Mr. Maxson: If it was a purchase, and we show that the books have not been properly kept—the business of the company has not been properly conducted, and the moneys not properly handled, we are entitled to an accounting as a stockholder.

The Court: I will allow it, subject to the objection.

Q. The business was fairly good at the time Mr. Fish went in, was it? A. Yes, sir, it was in fairly good shape.

Q. And you had no idea that the company was going to stop doing business? A. It is one of those things you cannot always tell about, if you are not very financially strong, about the grain business; you can soon get tripped up.

Q. Did you, or the Harrison Milling Company, ever pay interest on this loan? A. I think there was one payment of interest—of dividends.

Q. I am asking you if you or the Harrison Milling Company ever paid any interest on this loan? A. We paid Mr. Fish a dividend, or interest on the

stock; it was called interest on the stock in the minutes, I think.

Q. Point out in the minute book where it appears. A. And the $100 a month that has been paid him for three or four or five years, was paid him in consideration of his loan and for what little buying he did for us.

Q. That was interest, was it? A. The interest, and buying services.

Q. Point out in the minute book where it appears that you paid interest on the loan. A. This is during Mr. Coleman's time; and there has been times when he has neglected putting minutes in here. Here there is a place, October 21, 1904.

Q. That does not say anything about interest; that says "Dividend." A. Yes, sir.

Q. As a matter of fact, it was not a dividend, it was interest, was it?

Mr. Harrison: He is asking for a conclusion from the witness, based upon a statement read from the minute book. I object.

The Court: The minute book says "Dividend."

Mr. Harrison: I don't see what more he wants.

Q. Is that an accurate entry in the minute book?

Mr. Harrison: Objected to on the ground that this witness has no personal knowledge of the minute; the minute, so far as it is a minute, speaks for itself.

The Court: The objection is overruled.

A. I don't know whether it is accurate or not; it is Mr. Coleman's writing, and is probably copied from my minutes.

Q. Then, it might have appeared in your minutes before this was entered, that it was interest and not a dividend; is that so? A. It might, and Mr. Coleman might have changed it, I cannot tell.

Q. But you know it was interest, don't you?

Mr. Harrison: Objected to.

The Court: He says that he thought it might be interest.

Mr. Maxson: Both counsel and witness said that it appeared that interest had been paid from the minute book, as I understand it.

The Court: I did not understand counsel to make that statement.

By the Court:

Q. Do you know whether it was interest or dividend? A. Why, it probably might have been my version that it might have been interest; I would not say positively; so long a time has elapsed that it is hard work for a person to go back for eleven years.

Further cross:

Q. Do you know whether it appears on the books or not as interest or dividend? A. If I can see the books and look it up, I could tell you, but I cannot remember.

Q. Now, did you ever pay any interest after that time? A. The books will show that—I cannot tell from memory whether we did or not; I would not swear to it.

Q. During these conferences that were had previous to the time Mr. Fish came into the company, was anything said about payments of interest on this loan? A. It was spoken about by him, a number of times, about some return for his investment.

Q. What rate of interest was the company to pay? A. There was not any rate specified.

Q. You were to pay him anything you could afford to pay him, is that it? A. There was not any interest—any rate, stipulated.

Q. Then you might pay him interest or you might not, as you saw fit, is that it? A. It was left to the discretion of the Board of Directors, and he was one of the members of the Board of Directors —at the end of the year.

20 Q. It was really in the control of you and Mrs. Harrison, who were the majority of the Board of Directors, as to whether or not interest should be paid on this loan?

Mr. Harrison: Objected to; first, on the ground of its indefiniteness; he merely uses the general term, without specifying any particular period, and the directors have changed, from time to time; and second, the question of opinion, and by asking that question he is asking for a conclusion of the witness as to whom might or might not be in control. I 30 don't want to be captious, if your Honor please, but my proposition is, that when he asked "Who then was in control," they might be in control on one proposition and might not be in control on another proposition. That might open up another wide range of inquiry that may lead, we don't know where; that is the ground of my objection.

The Court: Separate the question.

Q. When did Mrs. Harrison come in as a director of this company? A. At the inception of it.

40 Q. Who were the directors after Mr. Fish came in, in 1903? A. After he came in?

The Court: That all appears; I think that they three were; that has all been gone into.

The Witness: Mr. Daniels was President before Mr. Fish came in, and then he was elected President.

Q. Who were the directors since 1903? A. Mr. Fish, Mrs. Harrison and myself.

Q. All that period? A. Yes, sir.

Q. Then, since Mr. Fish made this—what you say is a loan—to the company, the Board of Directors of the company, have always been the same three that are now the directors; that is, you and Mrs. Harrison and Mr. Fish? A. Yes, sir.

Q. Now, it was then obviously within the control of you and Mrs. Harrison as to whether or not any interest was to be paid, wasn't it?

Mr. Harrison: Objected to, on the ground of the form of the question: "It was then obviously within the control of you and Mrs. Harrison as to whether or not any interest was to be paid." I object to it further, on the ground that Mr. Fish had as much to say as either Mr. or Mrs. Harrison. Now, these people were entirely friendly up to 1909; everything was moving along smoothly.

The Court: Was it entirely in the control of yourself and your wife; I think I will allow the question to go in that form.

By the Court:

Q. Was it in the control of yourself and your wife?

Mr. Harrison: I object to the Court's question.

A. We did not consider it so in our control; it was friendly, and anything that was agreeable to Mr. Fish was agreeable to ourselves, and we did not try to take any advantage of anyone.

Further cross:

Q. Then, did you ever formally pass a resolution of the Board of Directors to give Mr. Fish any specific rate of interest on this loan?

The Court: He has answered that by "No"; he does not recollect, he said. Is that your answer still.

The Witness: Yes, sir.

Q. Then, you don't know whether any such resolution was ever passed or not?

Mr. Harrison: He went over that in sufficient detail.

Mr. Maxson: This is cross examination, and I submit that these objections are captious and trivial.

Mr. Harrison: You are going over the same thing two or three times.

Q. The only time, as a matter of fact, that you ever paid any interest, was that time that appears on this book, isn't it? A. To answer that, I should have to go over the books of record.

Q. You don't remember any other time that you ever paid any interest? A. I don't remember that, because it is so long ago; my memory won't go back ten or twelve years; I would have to investigate the books.

Q. Then you don't remember it, do you? A. I don't remember of any times at present, no, sir.

Q. Now, how long previous to Mr. Fish's becoming connected with this company did you make

the agreement you say you had with Mr. Mullin about your overdrafts? A. There was not any mention of overdrafts.

Q. The amount of money which you took from the treasury of this company, in addition to the salary which was fixed for you, I mean. A. There was an understanding——

Q. When did you make this arrangement? A. I made it when Mr. Mullin and I went in the business in 1899, in August——

Q. And you testified that you made the same agreement with Mr. Fish when he came in? A. Yes, sir.

Q. Did you have the Mullin agreement in mind when you talked it over again with Mr. Fish? A. Did I have the Mullen agreement in mind when I talked it over again with Mr. Fish?

Q. Yes. A. It was practically the same agreement with Mr. Fish as I had with Mr. Mullen.

Q. Now, do you recall the amount of withdrawals, as you call them, that you made from the time you made this agreement with Mr. Mullen up to the time Mr. Fish came into the company? A. Not unless I refresh my memory by looking at the books.

Q. You remember, don't you, that Mr. Tichenor, the bookkeeper for the company, testified that he got up a stipulation, at Mr. Fish's request, of the amount of moneys that you had taken out of the treasury of this company, in addition to your salary, don't you? A. Mr. Tichenor made a statement to Mr. Fish, I remember that.

Q. Did you ever see the statement? A. I won't say whether I have ever seen that particular statement or not.

Q. Can you say whether or not that is a copy of it; I mean just this typewriting part? A. I cannot say.

Q. Will you examine it and say whether or not it actually states the amount of your withdrawals for the period shown on it?

Mr. Harrison: I think the witness testified that he could not recall those matters.

The Court: He said he could not recall, except he had the books to refresh his memory; now, certainly, his asking the question whether this refreshes his memory, practically that is the question.

By the Court:

Q. Can you tell whether that is an accurate statement of the withdrawals? A. I cannot tell, no, sir.

Q. Is it inaccurate? A. I cannot tell.

Further cross:

Q. Then, as far as you know, that is an accurate statement?

Mr. Harrison: I don't think that is fair.

The Court: No, that is not fair, Mr. Maxson; he says he does not know whether it is accurate or inaccurate.

Mr. Maxson: What are we to do, may it please the Court? He says he does not know; he is charged with knowledge. This witness is an officer of a corporation; he is the treasurer of the corporation, having charge of its funds. Now, he draws certain moneys from the treasury; he says he does not remember what he drew——

The Court: He says he does not know whether this is a statement of it.

Mr. Maxson I produced the statement made by the bookkeeper; I have told him it was the statement.

The Court: Because you say it is the statement, does not make it necessary for the witness to take your statement.

(Question withdrawn.)

Q. I show you this statement again, and ask you whether you can point out any inaccuracies as to what you call withdrawals on that statement? A. I cannot tell, unless it was checked up with the ledger books.

By the Court:

Q. Have you seen that statement before? A. I cannot say that I have; there are only typewritten figures there, and I cannot tell whether it was our typewriter or somebody else.

Further cross:

Q. At the time you bought the stock from the Beyeas, had it increased in value over the time Mr. Fish made what you say was a loan?

Mr. Harrison: I make the same general objection as to stock valuations as were previously made.

The Court: All right.

Mr. Harrison: I think it is only fair——

The Court: Do you want to deal with the market value?

Mr. Maxson: The market value.

By the Court:

Q. Did it have any market value when you bought the Beyea stock—that is, salable, in open market? A. I don't think it had.

Further cross:

Q. Did not the Beyeas at that time have this

stock pledged for a loan at the bank? A. One of them did; the cashier is a neighbor of the Beyeas.

Q. Did you ever see this paper marked "Exhibit F" before, account of A. Gould Harrison? A. I won't say that I have, no, sir.

Q. You know that this is an affidavit filed in this cause—your affidavit; do you remember swearing to that?

The Court: Is that an original affidavit?

Mr. Maxson: No, sir, it is a copy.

A. It looks like an affidavit that I have seen before.

Q. Then this exhibit shows your withdrawals, as well as the credits which you have made to yourself on the books of the company, doesn't it? A. I don't know who got that statement up, or under whose directions, or whether it is a true copy of the ledger or not; probably it is.

The Court: You are not responsive to the question.

Mr. Harrison: We are perfectly ready to have Mr. Tichenor prepare a statement of the books; the books are in evidence—as to the withdrawals—what the books show.

The Court: Does the affidavit, Mr. Maxson, that you have now shown the witness, deal with this statement?

Mr. Maxson: I think not specifically; it refers to certain withdrawals, and this statement is annexed showing those withdrawals; it does not say specifically that this is the witness's statement of withdrawals; I want to find out whether he knows how much he has withdrawn.

The Court: He says he does not, without

looking at the books, and the books are in evidence.

Q. Now, both of these statements and the books of the company show that your withdrawals during the four years from the time you say you made this agreement with Mr. Mullen, until the time Mr. Fish came in, amounted to $1,347.54. During the four years after Mr. Fish came in, the books show, as well as your statements, that these withdrawals amounted to $9,488.38; now, how do you account for the fact that you drew so much more after Mr. Fish came in?

Mr. Harrison: I think that question is most unfair; he puts a conclusion at this witness, and "the books show," and "your statements show."

The Court: It is not his statement, in the first place.

Mr. Harrison: Exactly what I am coming to.

The Court: Is this statement in evidence?

Mr. Harrison: No, sir, it is not in evidence. We will have Mr. Tichenor prepare either a general summary or a detailed statement of all these withdrawals, or both, and have him here at the next hearing, or, if we can get him, have him down here in an hour; we are ready to do anything that may suggest itself to the Court to bring these figures in evidence; but to ask this witness to go over—when he did not keep these books—I think it is not only unfair to the witness but it is also taking the time of the Court.

The Court: I think, with respect to his own withdrawals, he should be cross examined, if desired, and counsel should ascertain, as far as he can from the witnesss—he may look at

the books if he wants to, and fix, if he can, the amount of the withdrawals, and draw it from this witness, if posisble.

Mr. Maxson: If we go into these details and present each separate item in these books to this witness, your Honor is practically taking the account; we have got to generalize to a certain extent.

The Court: The last question will be allowed.

Q. (Question read.)

Mr. Maxson: I will withdraw that question.

Q. Now, the books of the company show that your withdrawals, during the four years previous to the time Mr. Fish came in the company, totalled the sum of $1,347.54; for the first four years after Mr. Fish came in, those withdrawals totalled the sum of $9,488.38, according to the books. Now, will you explain, if your agreement with Mr. Fish was the same as it was with Mr. Mullen, how you came to draw so much larger an amount of money? A. Well, the business had been going on longer; we were making more money than we did during Mr. Mullen's time.

Q. Were you making as much money as the difference in the ratio between those two sums, that is, about eight times as much? A. I can only tell that by asking the bookkeeper to give me statements and see what the profits were.

Q. Then you based your withdrawals on the amount of money the company was making? A. No, sir.

By the Court:

Q. That is what you said a few moments ago. A. I said the company was making more money.

Further cross:

Q. Can you give any other reason why you drew so much more money than that which you— A. Probably because I needed it for personal expenses.

Q. And you drew whatever you needed, is that it? A. I needed enough to live on.

Q. Do you know whether or not the Beyeas knew anything about this agreement with Mr. Mullen? A. I don't know whether the Beyeas did or not, but Mrs. Beyea and the other sister did.

Q. And they were parties to it, were they? A. Well, they were in such a short time; it was a family affair.

Q. Did you ever have any conversation with Mr. Fish about taking an option on his stock for this purchase? A. I think there was something spoken about it, at a meeting at Mr. Harrison's library.

Q. And at that time was there any amount mentioned? A. Why, I think he mentioned some price that he would take for his stock.

Q. Didn't you take an option from him for the purchase of the stock for $35,000? A. I won't say what the amount was.

Q. Wasn't it about that amount? A. I would not say.

Q. Or was it $25,000? A. I think I had an option with him, but I would not say as to the amount for I have forgotten it.

Q. At whose suggestion was that option taken? A. I don't know who suggested it, whether I asked Mr. Fish, or whether he suggested it, I won't say; there were so many talking and suggesting things, that my memory don't serve me in regard to that.

Q. You remember that slip from the drawer which was introduced in evidence in this case; the slip on which you have the credit moneys, A. Gould

Harrison and L. G. Dye; do you remember that? A. Yes, sir.

Q. Is that slip, so far as you know, still in the cash drawer of the company? A. Well, so far as I know; at the last hearing it was missing; after we had put it in evidence we could not find it; I don't know where it is to-day.

Q. At the time it was produced here and offered in evidence, was it taken from the cash drawer of the company? A. Yes, sir.

Q. And represented a cash transaction in the drawer? A. Yes, sir.

Q. You have some other slips there, have you, of the same kind? A. There are several slips there, but I don't know whether they are the same kind or not; they represent cash transactions, but not the same sort.

Q. Representing the same kind of entries—leaving out the name of the creditor or debtor that appears on it? A. We have slips there representing cash transactions, yes, sir.

Q. And the custom is the same that the company has followed previously; to enter up on slips withdrawals from the cash? A. Not all withdrawals, no, sir.

Q. Well, some of them? A. A few.

Mr. Maxson: Will you produce those slips, Mr. Harrison; and I would like to have Mr. Tichenor produced again on the next hearing. I find that there is a number of things that this witness does not know that they say he does know.

Mr. Harrison: We will have him here. Write down just what you want.

The Court: During recess, write down what you want.

Q. Do you recall that check, Mr. Harrison, that you and Mr. Tichenor testified was paid to Mr. Fish, or rather, that Mr. Fish signed—to pay some bills for you at one time? A. Do I recall the check, do you say?

Q. Yes? A. I remember the check.

Q. $115.00? A. Yes, sir.

Q. Do you remember the time that that was drawn? A. I have some recollection of it.

Q. Do you remember to whom it was drawn in the stub of the book, before your name was put there? A. The bookkeeper had charge of the drawing that particular check.

Q. Did you have any business transactions with a man named Mr. Gould? A. I sold him goods for a good many years.

Q. Did you buy anything from him ever? A. Probably a dollar or two.

Q. Did you ever buy any grain from a man named Mr. Gould? A. I guess not; he bought from us.

Q. You never did buy from a man named Mr. Gould? A. I don't know who you mean; I don't remember buying any grain from a man of that name; possibly we might.

Q. Mr. Tichenor testified you had no business transaction with anyone named Gould; now, what have you to say about that? A. I don't know what Tichenor testified; we sold Mr. Gould; we had an account with him; he bought some goods from us and paid for them; we did not buy from him as a general thing.

Q. Do you remember the time when your salary was increased from $20.00 to $40.00 a week? A. I remember it was, yes, sir.

Q. Did you have any conversation with Mr. Fish previous to the time of that increase, about it? A. I must have had.

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Q. Do you recall where the conversation took place? A. I do not.

Q. Or who was present? A. In all probability, Mrs. Harrison and Mr. Fish and myself were present.

Q. Will you please state the conversation? A. That is something I cannot state word for word, it is impossible.

Q. Was the increase made at your request or at Mr. Fish's suggestion? A. As near as I can remember the conversation, or what was said about it, it was said at the time, that my salary should be increased, and we settled on this $40.00 a week, and that if the withdrawals were beyond that amount, they would be taken care of at the end of the year, but we thought that the withdrawals beyond that amount, would not be over a few hundred dollars a year.

Q. Who was present at this conversation? A. I thought I answered that before. It was Mr. Fish and myself, and probably Mrs. Harrison.

Q. What part of the conversation did you have? A. That is something I can't remember.

Q. What part did Mrs. Harrison take in it? A. I cannot tell you what part she took in it.

Q. What did Mr. Fish say? A. That is something I cannot say, only what was said before; I cannot put it any different from that.

Q. Do you know when this statement was placed in the minute book? A. I cannot tell the exact time, no, sir.

By Mr. Harrison:

Q. Referring to the minutes, cannot you fix the time? A. Probably. That was set in, probably, at the time these minutes were written.

Further cross:

Q. When was that? A. It is dated Montclair, July 19.

Q. Of what year? A. 1910.

Q. Who pasted it in? A. In all probability, I did, as I was the Secretary.

Q. What was the purpose of pasting this in the book? A. It was a matter that came up at the meeting, a matter of record, and it was on the resolution, and was pasted in the book.

Q. At whose suggestion was it done? A. I cannot say now whose suggestion it was; according to the minutes, it spoke of the statement, and the statement was pasted in the book, or annexed.

Q. You don't remember who made the suggestion that it be put in the book?

Mr. Harrison: Objected to as not material.

A. I don't know whose suggestion it was, but I know there was a resolution prepared relating to that statement, whatever the resolution said there is all I know about it.

Q. Of course, the statement was after you and Mr. Fish began to have some differences, wasn't it? A. Yes, sir.

Q. And this was not pasted in the book at Mr. Fish's suggestion? A. I don't think it was.

Q. How long after the transaction that that relates to, was it pasted in the book, do you know? A. I don't know.

Q. It was a year or so, wasn't it? A. The date of the minute is July, 1910, whatever it is in the book; when they were copied in, that statement was attached to the minutes in the book.

Q. At the same time the minute was written up to which that statement relates, that was pasted in

the book? A. I presume it was at the time the minutes were written in the book.

Q. When did you first have any conversation with Mr. Fish about these overdrafts? A. Before he went in the business.

Q. How long before? A. A short time.

Q. At which one of the meetings that you had with him was the conversation had? A. At each one of them.

Q. All of them? A. Yes, sir.

20 Q. And at every meeting you had with Mr. Fish, you discussed these withdrawals, did you? A. Before he came in he understood about it.

Q. Each one before he came in? A. Yes, sir.

Q. Did you at any time tell him how much you had withdrawn—how much you had taken above your salary in previous years? A. It was explained to him; he knew what they were at that time.

Q. Did you, at any time, at any of those meetings, tell Mr. Fish how much money you had withdrawn above your salary? A. Those meetings

30 when?

Q. Before he came in? A. I certainly did.

Q. Was anything said about your having the same amount in the future? A. Nothing was said about having the same amount; it was that the conditions were to be the same as they had been before.

Q. Who were present at these meetings you had with Mr. Fish? A. What meetings?

Q. I am speaking of the same meetings all the time—before he came into the corporation? A. Well, Mr. Fish and myself were the only ones pres-

40 ent when we talked of his coming in, excepting over at Elm Street, when my wife was there, once, I think; it is so long ago.

Q. Nobody else was present at the Astor House meeting? A. I don't think there was.

Q. And no one else was present at the meeting down at his office? A. As I remember it, there was no one there but Mr. Fish and myself.

Q. But you are not sure whether anyone else was present or not? A. I don't think anyone else was; in a few minutes, we went to a restaurant for some lunch.

Q. And you are sure there was no one else present at the Astor House? A. I feel sure that there was no one else.

Q. And nobody, at any one of the meetings that you had with Mr. Fish, was present, except, perhaps, Mrs. Harrison, besides you and Mr. Fish? A. We had him in the house; there were other people around.

Q. I am referring to these negotiations which took place before Mr. Fish came into the company? A. I don't remember that there was anyone else present.

Q. Will you say that no one else was present at any of these meetings? A. I don't remember of anyone else; there might have been; I don't remember.

Q. Did Mr. Fish ask you to give him any written statement with respect to the financial condition of the company, before he came in? A. He asked for a statement.

Q. Did he ask you for a written statement? A. Yes, sir.

Q. Did you send it to him? A. In all probability I did, if he asked for it.

Q. Did that statement show your withdrawals? A. It showed the true condition of the books just as they were.

Q. Did the statement which you rendered at Mr. Fish's request show your withdrawals, as one of the items on it? A. It was not set out separately, but it showed the condition of the books.

Q. Have you told anybody, during the time Mr. Fish has been interested in this company, that you were only interested in the company to pay expenses? A. Um—I don't remember it.

By Mr. Harrison:

Q. Don't you know? A. No, sir; I never told anybody that.

Further cross:

Q. Is this agreement permitting you to withdraw anything you please from the company, in addition to your salary, still in force?

Mr. Harrison: That is up to the Court to determine, I think.

By the Court:

Q. Can you answer that? A. (No answer.)

Further cross:

Q. As a matter of fact, have you, since this action was commenced, withdrawn anything in addition to your salary? A. Not to my recollection.

Q. Don't you know? A. I am pretty positive I have not.

Q. Cannot you say positively? A. I say I am pretty positive that I can say no.

Q. When did you enter the payment of your salary on the books? A. The bookkeeper enters it when he draws a check—probably before or right afterwards.

Q. When do you draw your salary? A. Monthly.

Q. On the first of the month? A. No, sir.

Q. On the last of the month? A. No, sir.

Q. When do you draw your salary? A. On the 18th of the month.

Q. On the 18th of each month you draw your salary? A. Yes, sir.

Q. Has there been any increase in your salary since the increase from $20 to $40 a week? A. Yes, sir.

Q. When did that increase take place? A. According to the minutes—I cannot tell without refreshing my memory from the minutes—September 20, 1909.

Q. That was the same time that Mr. Fish's salary was increased, wasn't it? A. Yes, sir.

Q. And you were each to get $3,000 a year? A. Yes, sir.

Q. Has that resolution ever been rescinded by the Board of Directors of the company, as far as you know? A. I don't know anything about the resolution being rescinded; I know I have been drawing salary with the exception of five or six or eight months, at the same rate.

Q. Has the resolution been rescinded raising your salary and Mr. Fish's salary? A. Nothing, according to the records.

Q. Then it has not been rescinded? A. I don't know of anything on the record where it has.

Q. Has there been any further increase in your salary other than that? A. No, sir.

Q. Then, are you drawing the same amount, $3,000 a year, today? A. Yes, sir.

Q. Since that resolution fixing your salary at $3,000 a year, have you drawn anything from the treasury in addition? A. No, sir; I answered that previously.

Q. These minutes show that, in fact, to have taken place, on the 30th of September, 1907; is that the true date? A. That was written in there some time, I don't know when.

Q. Was that the date that the meeting was held? A. There was not any meeting held.

Q. Is that the date that the agreement was made? A. I won't say; Mr. Fish, probably, wrote it in there a month or two afterwards.

Q. Mr. Fish wrote it in a month or two afterwards? A. Yes, sir.

Q. And you are quite positive, are you, that you made no withdrawals in addition to your salary since this agreement was made, which was entered in the book as of September 30, 1909? A. I have, at times, once in a while, had to borrow a few dollars, and put a slip in.

Q. I mean to say, have you drawn any moneys in addition to your salary, not have you anticipated the payment of your salary, but have you gotten any money from the treasury of this company in addition to your salary since September 30, 1909, or thereabouts? A. Why, no, except as I stated. Once in a while, in anticipation of my salary, I have put a check in.

By the Court:

Q. You have not taken any money outside of your salary, then, from the company, since September 30, 1909? A. I have, at times, drawn a few dollars from the concern, and had a slip put in the safe, and when I got my check for salary, I would draw my check and pay it.

Q. Have you paid all those slips? A. I think there is only slip in there now, a slip of $35.00 in there,—I mean check.

Further cross:

Q. You have not intended to do it; that is to say, you considered that agreement terminated at the time your salary was increased to $3,000 a year; is that it? When I say the "agreement," I refer to the agreement that you should be permitted to withdraw what you pleased—before salary? A. When Mr. Fish came out there, we talked over the matter of salaries, and he said that he could live on about $3,000 a year, and I said, "Well, I think I can, too;" and he said, "Then we will be contented to draw out that amount, and if the business would warrant any further withdrawals at the end of the year, made in profits, we would divide that up at the end of the year.

Q. Did you consider that increase of your salary to $3,000 a year, terminated the agreement that you say you had with Mr. Fish, that you might withdraw what you pleased, in addition to your salary? A. I said that the agreement with Mr. Fish and myself as to $3,000 a year salary, was that we would make that withdrawal, each of us—and if at the end of the year the business showed any good profits, enough to make a further distribution or distribution, we would divide some of it up.

Q. Between you and Mr. Fish? A. Yes, sir.

Q. Equally? A. Yes, sir.

Q. Mrs. Harrison testified in either her direct or cross examination, that Mr. Fish had done nothing to further the business of the company; is that as you understand it to be?

Mr. Harrison: I would object to that question, on the ground that a question of that kind, recalling testimony of another witness,—

the attention of the witness being examined should be directed to that testimony.

Mr. Maxson: That is so; I will withdraw the question.

(Question withdrawn.)

Q. Has Mr. Fish, since the time he came in to this company, done anything to further the interests of the company in any way? A. He has done some things, yes, sir.

Q. He has sold you a large amount of grain, 20 hasn't he? A. He sold us grain, yes, sir.

Q. And for a long period he sold you grain at cost price to himself, didn't he? A. What part of it was at cost; some of it, he said at times, it came through his son, and he made a profit on it.

Q. Have you any idea how much grain he sold the company? A. No, sir, I have not.

Q. Was it as much as $250,000 worth? A. Look at the books; they would tell that; I would not say.

Q. Did he do anything else besides sell you grain at cost, or sell the company grain at cost, to 30 further its interests? A. Yes, sir.

Q. What else? A. He introduced me to the cashier of a bank, and we made arrangements to discount some drafts there.

Q. And that was on Mr. Fish's credit? A. No, sir, the credit of the Harrison Milling Company.

Q. Wasn't it his bank? A. He did not own it; it is the bank he was doing business with.

Q. It is the bank where he made his deposits? A. Yes, sir.

Q. And he was to indorse the paper? A. I don't 40 know what the arrangement was.

Q. Well, did he indorse it? A. The record of the drafts will show that; I know the credit was

given on the strength of the statement of the Harrison Milling Company that the cashier explained to them.

Q. Then Mr. Fish did indorse this paper, didn't he? A. I don't know whether he did or not until I took all the drafts.

Q. You don't know? A. Not until I look at the drafts.

Q. Was there any conversation at the bank about Mr. Fish's indorsement? A. I won't say as to that; I have forgotten.

Q. Did or did not the bank require that Mr. Fish indorse this paper? A. I won't say whether they did or not.

Q. And you don't know whether he did indorse the paper or not? A. Not until I look at the drafts; I can tell then whether they were indorsed or not.

Q. Was it customary for him to indorse the paper during the time he was actively connected with the company? A. What paper?

Q. Negotiable paper of the corporation? A. Why, it is only a matter of two or three notes that he ever indorsed for the company.

Q. You are sure about that? A. I am not sure, but I think it is a matter of only two or three notes, possibly four or five, but that is about all.

Q. Not more than five? A. Just a few.

Q. Now, when you drew any money in anticipation of your salary, when you have drawn any money in anticipation of your salary since September 30, 1909, how has it been entered on the books of the company? A. It was not entered on the books of the company.

Q. How was any record made of it? A. From the slip or a check.

Q. Are those slips still kept? A. When they are settled they are destroyed.

Q. How long do you keep them? A. As soon as they are settled they are destroyed.

Q. As soon as they are settled they are destroyed? A. Yes, sir.

Q. Have you any slips in the drawer now? A. I went all over that before.

Mr. Harrison: He said there was one slip; he made some reference to a $35.00 check.

The Court: Proceed, Mr. Maxson.

Q. Just previous to the agreement to increase the salary to $3,000 a year, did you make a large withdrawal from the company? A. The books will show whatever happened.

Q. On July 31, 1909, did you credit yourself with $2,000 in addition to your salary, on the books? A. I don't know whether I did, or whether the bookkeeper did; whatever the records are, they will show.

Q. Did you withdraw $2,000? A. Not at one time, no, sir.

Q. Well, previous to that, did you withdraw that amount so that—— A. No, sir.

Q. Over what period did those withdrawals go, represented by that entry? A. I cannot tell you without referring to the books, or have the bookkeeper refer to them.

Q. Did you ever keep any individual track of your withdrawals from the company, in addition to your salary? A. I have at times; I used to.

Q. How did you keep them? A. Little passbook.

Q. Have you got any of those books? A. I have a book here now.

Q. Does it show the withdrawals? A. In this book? It is only a year old.

Q. Have you any of the books which show any of these overdrafts? A. I don't think I have; still, I might have.

Q. Don't you know whether you have? A. No, sir.

Q. Previous to the time when you began to use this present book, had you entered all of your overdrafts in your own book? A. Well, when I would look over the ledgers——

Q. I am asking you now what your custom was? A. I kept a memorandum of my account as near as I could; sometimes I would not have it on, sometimes I would.

Q. So that that book would show all of your overdrafts? A. Not all of them.

Q. Then you did not have any statement of all of your overdrafts in addition to your salary from this company? A. The books are there for me to look at.

Q. Then all you knew of your overdrafts of the company, were contained in the company's books? A. Do you mean the drawing account?

Q. All you knew about the moneys which you withdrew from this company in addition to your salary, is contained in these books; you did not keep any personal memorandum of it? A. We kept a little memorandum of the condition of my personal account.

Q. Did that memorandum contain all of the items or money which you drew? A. It might have, and might not.

Q. Did that memorandum contain all of the items of moneys which you withdrew from the company in addition to your salary? A. I don't suppose it did contain them all.

Q. Do you know whether it did or not? A. At

times I would forget to put them down, I suppose, because I depended on the ledger account, the books of the corporation.

Q. Then, as far as you know today, all of the record of your overdrafts, in addition to your salary, is contained in the books of the company? A. My drawings are all contained in the books of the company; I do not consider them as overdrafts.

Q. In calling them overdrafts, I adopted your own suggestion, as I think the record will show. How did you generally make these withdrawals, in the form of a check or in cash? A. Both ways.

Q. How do you keep your cash? A. What do you mean?

Q. Do you keep it in a safe, or in a drawer, or where? A. I keep it in the cash drawer in the office.

Q. Did you go there to the drawer and draw money as you pleased? A. I drew money out of there when I needed it.

Q. Whether the bookkeeper was there or not? A. Yes, sir.

Q. When you drew it in the bookkeeper's absence, what memorandum did you make of it? A. I made a slip.

Q. What did you do with the slip? A. Put it in the cash drawer.

Q. Did you call it to the bookkeeper's attention? A. The bookkeeper would probably see it in an hour or two afterwards.

Q. How soon after these slips were put in the drawer were they entered up in the book of the company? A. They were not entered up.

Q. Did you have the direction of the bookkeeper? A. I probably did.

Q. Did you or didn't you? A. He is under my orders.

Q. Did the bookkeeper keep the books according to your directions or not? A. Well, both bookkeepers kept them according to the customary way, according to my ideas.

Q. How frequently did you examine the books? A. I have looked over the books once or twice a week, sometimes oftener, and sometimes less.

Q. Did you have any fixed time to make any examination of the books? A. No, sir.

Q. You left the matter pretty generally to the bookkeepers? A. Yes, sir, most of it; still, I had supervision over it; I would go down at nights and during the day and look over the accounts.

Q. Were you, or were you not, generally familiar with the accounts of the company on the books? A. I think I was familiar with them, as near as I can remember, looking over them once in awhile.

Q. How often did you have the books balanced? A. What books?

Q. Your books? A. We draw off a statement every month, a trial balance.

Q. What did that statement give? A. We made a trial balance every month.

Q. What did it show? A. It showed the accounts.

Q. Generally, what sort of items? A. It is an exact copy of the ledger.

Q. Did it show your individual accounts? A. It always did, I guess.

Q. Then, would it appear from that statement just what the amount was that you had withdrawn in addition to your salary, during the period covered by the statement? A. The ledger would show that.

Q. Did the statement show it? A. It is the trial balance, I am talking about.

Q. Did the trial balance show it? A. The trial balance showed the copy of the ledger.

Q. Did the trial balance show the amount of your withdrawals? A. With the exception of what might have been a slip or two in the safe; there might have been a slip or two in the safe that was not included in the account.

Q. Did it show them as a separate item? A. Yes, sir.

Q. How was it stated on the trial balance? A. A. Gould Harrison account, so much.

Q. Did that show how much was given to you by way of salary? A. No, sir, it showed what the debt or credit on the ledger was; it was a copy of the ledger.

Q. Did that debit include your salary account as well as your overdrafts? A. It was a copy of the ledger on the first of each month, at the end of each month.

Q. Did you ever send Mr. Fish during the whole period of time that he was with the company, a statement of your overdrafts? A. I sent him statements.

Q. Did you ever send him a statement of your overdrafts? A. I sent him statements, and if I can see the statements that I sent him—whatever the statements include——

The Court: We will adjourn to two o'clock.

After Recess.

A. Gould Harrison resumes the witness stand.

Cross examination (Continued) by Mr. Maxson:

Q. Do you recall whether you ever sent or directed that any statement be sent to Mr. Fish,

which showed your overdrafts? A. The only way I can explain that is, the statements that were sent him were the copy of the books made by the bookkeeper—all accounts included.

Q. What I refer to principally is your overdrafts as distinguished from the salary that you were drawing, with the separate items in relation to overdrafts? A. I don't think there was any separate item went in them.

Q. You personally rendered the first statement that Mr. Fish got, didn't you? A. I could tell if I saw it.

Q. I show you Complainant's Exhibit C 2, and ask you whether or not that is in your handwriting? A. Yes, sir, that is in my handwriting.

Q. Does that statement show your overdrafts? A. Not separately—it is included.

By the Court:

Q. In what item? A. In open accounts; I have it on each side, open accounts,—on the resource side.

Q. That is to say, in the item of $13,742.95? A. I think that is what it is; it is either included in the sundry account or the open account.

Q. Well, you took this off the books, didn't you? A. My recollection is, that Mr. Coleman took it off the books; the statement had been taken off the books July 1st or August 1st, and I had copied it from his statement, that is his form of statement, Coleman's form of statement.

Q. Then, you don't know? A. It is either the open accounts or sundry accounts.

Q. Do you know whether you were indebted to the company in the sum of $1,487.57? A. At that time the books will show just what it was—the ledger account.

Q. The book shows $1,347.54? A. If the books show it, all right.

Q. Well, while this agreement with Mr. Mullen was in force, and previous to the time Mr. Fish came in, did you make your entries of your overdrafts in the books, the same as you did after Mr. Fish came in? A. To my recollection, they were all made about the same way.

Q. And entered in the same items in the books? A. As far as I recall.

Mr. Harrison: I would request that counsel make his questions a little more specific.

Q. With reference to whether they were merchandise or accounts receivable, or what they were?

The Court: Do you understand that?

The Witness: No, sir.

Q. How were they entered in the books, under what title were they entered in the books during Mr. Mullen's time? A. Under my own account, the same as they were hereafter.

Q. And after Mr. Fish came in? A. About the same way; the bookkeeper had charge of the books, and he made the charges always.

Q. Now, when, during Mr. Mullen's time, did you have a resolution passed to cross off these overdrafts? A. Well, as I see here, there is no resolution, except that it mentions the fact, at the meeting of July 19, 1900, myself as treasurer and agent, with the same authority and conditions as the past year—the understanding that I had with Mr. Mullen was, that—well, of course, the business was always considered mine, and Mr. Mullen stood good for me, security, credits, and so forth.

Q. Then, as far as you know, no resolution was ever passed during Mr. Mullen's time to cross off

any overdrafts or give you credit for them? A. My recollection is, that once or twice it was; but I see the minutes don't show it; Coleman, our bookkeeper, was probably like some others, he would neglect sometimes to keep some minutes.

Q. Then, you think there were resolutions passed? A. I think, probably there was one; I would not say positively as to that.

Q. And if such a resolution was passed, a credit would appear to your account on the ledger? A. It should, if it had not been neglected.

Q. There is no question but that the ledger correctly shows the amount of your overdrafts, is there? A. I don't dispute the items in the books —the charges.

Q. But you are sure that a resolution was offered to cross off overdrafts in which Mr. Mullen concurred?

Mr. Harrison: Objected to; he has no right to put that in the witness's mouth.

Mr. Maxson: Question withdrawn.

Q. Was or was not there a resolution ever offered with Mr. Mullen's concurrence that overdrafts be crossed off, from the time this corporation was formed until the time Mr. Fish came in? A. I would not say positively whether there was or was not, but my recollection is that there was once.

Q. Now, it appears that the first overdrafts crossed off after Mr. Fish came in, was by the resolution of November 18, 1905, for the sum of $4,552.63; were there any overdrafts in addition to that sum at the time the corporation was formed down to this time? A. I cannot say positively; I think that was the amount taken from the ledger, according to that resolution.

Q. Was not that the full amount of your overdrafts from the time the corporation was formed, down to the time when that resolution was passed? A. I don't know whether it was or not; I know at the time that resolution was passed, the amount taken from the books given by the bookkeeper; I don't know whether it embraced everything or not; I think possibly it did.

By Mr. Harrison:

Q. Can you tell from an examination of the books? A. Yes, sir.

Mr. Harrison: With the Court's permission, I hand the witness the book.

The Court: All right.

The Witness: It included the account up to February 1st, 1905.

Further cross:

Q. That amount included in that resolution included the amount of your overdraft up to when? A. According to the account here, up to February, 1909.

Q. And when you say "according to the account," you refer to the account of A. Gould Harrison, on page 68 of "Exhibit A-B-C-1 C.E.R.?" A. Yes, sir.

Q. You refer to this account you are now looking at? A. Yes, sir.

By the Court:

Q. That is the account you refer to as containing the overdrafts? A. Yes, sir.

Further cross:

Q. Is not that item there just previous to February 6th, of 1906, instead of 1905? A. No, sir, the book says 1905.

Q. It says October, at the top of the column, November, with 1905 at the top; then February, April and May? A. Yes; it must have been 1906.

Q. Then, your overdrafts up to February 6, 1906, were $4,552.63? A. There was no charge in there in December or January, so this included up to November 28.

By Mr. Harrison:

Q. What year? A. 1905. The last charge here is November 29th; that embraces $4,552.63.

Further cross:

Q. Now, what do the books show the amounts of your overdrafts were on the date of this resolution, November 18, 1905? A. November 18—this account shows a little less than that, but these other charges, if I could refer to the cash, were probably the slips in there at the time, put in there by the bookkeeper and myself, for cash taken out.

Q. And at the time this resolution was passed, as it appears from the minute book, on Mr. Fish's motion, you had discussed all the items of this overdraft with him, hadn't you? A. I did not discuss all the items; I had the understanding with him that the drawings were so and so—the aggregate amount of them—from time to time.

Q. And was anything said about an increase of the salary? A. When?

Q. At this same time? A. What time was that?

Q. The time we are now discussing, November 18, 1905? A. If I can see the resolution and see what it says.

Q. But you do recall, from your recollection, that you talked over these different items with Mr. Fish? A. I have talked the items over with him, yes.

Q. I mean, previous to the time he agreed to cross off these overdrafts? A. Yes, sir.

Q. And told him how much you had withdrawn? A. Yes, sir.

Q. And he agreed to cross it off? A. Yes, sir.

Q. Now, was anything said at that time about an increase in your salary? A. If I can see the resolution, by refreshing my memory——

Q. But you remember consulting the resolution? A. I cannot remember back ten years just what was said.

Q. You remember part of the conversation? A. I cannot remember those things, no.

Mr. Harrison: This is all admitted in the answer, that Mr. Fish consented to the charging off of the overdrafts of $4,550. In their bill, they say that they consented to the charging off of $4,552.63. At the time of the date of the resolution, November 18, 1905, the amount was slightly smaller than the amount shown in the resolution, $4,552.63. Now, the witness explained that there were slips in the cash drawer which made up the amount.

Mr. Maxson: The last question was with respect to the increase of salary.

The Court: Is it admitted in the answer that this resolution was passed at this time increasing the salary?

Mr. Maxson: I have a very good reason. I don't want to tell the witness on cross examination what I want to get. I am asking this witness to relate the conversation. Now, he tells part of it, and I am asking him to tell the balance, and he says he cannot remember; of course, if he cannot, that is all there is to it. The circumstances under which the resolu-

tion was passed are extremely important in this case.

The Court: Go at that, then.

Further cross:

Q. You remember part of that conversation with Mr. Fish with respect to this resolution, but not all of it; you do remember the discussion about your overdrafts? A. Yes, sir.

Q. But you don't remember what was said about your increase of salary? A. Not unless I can refresh my memory by the records, if it is there.

Q. Now, did you direct the sending of any statements to Mr. Fish at any time after this original statement, "Complainant's Exhibit 2?" A. He has had other statements.

Q. Did you direct that they be sent to him? A. Whenever he asked for them, we sent them to him; and every year he got a statement.

Q. Did you direct your employes there to send them to him? A. Once a year, at the end of the year, as I remember, he would always have a statement sent him.

Q. Was that sent in the regular course of business to all the stockholders, or just sent to him alone? A. All the stockholders had them.

Q. It was sent to all the stockholders? A. Yes, sir.

Q. Now, on September 25, 1907, you crossed off $386.74 more, by way of overdrafts; who made up that statement of overdrafts? A. The bookkeeper.

Q. You got your amount from the bookkeeper? A. Yes, sir.

Q. And did you make any investigation to find out whether that was all you had withdrawn or not on that sale? A. I think, probably, I took the bookkeeper's word for it at that time.

Q. Who was the bookkeeper at that time? A. When?

Q. September 2nd, 1907? A. Probably the minutes will show me whether it was Coleman; I think it was Coleman; I think Bert Tichenor came there in January, 1907; still, I am not positive of the date.

Q. Where was that meeting held, at which that resolution was passed? A. Well, the minutes don't show where it was held; it was either at the house or the office.

Q. You don't remember where it was held? A. I would not say positively whether it was the house or the office.

Q. How long before the meeting was held did you get these items of overdrafts from the bookkeeper? A. Previous to the meeting I got the amount.

Q. How long before this meeting did you call Mr. Fish's attention to the overdrafts? A. Probably before the meeting and if not then at the meeting.

Q. Did you give him the items? A. I gave him the amount.

Q. Gave him the total amount? A. Yes, sir.

Q. Did you have any conversation with him about it? A. I certainly did.

Q. What did you say to him? A. What I said in words I could not state, but I gave him the amount at the meeting and he was satisfied as to the drawings.

Q. Did he so express himself? A. He certainly did; he never raised any objections until 1910.

Q. Did he offer this resolution then? A. He certainly did.

Q. Now, on July 30, 1908, you were again indebted to the company in $2,016.55? A. Whatever the books have it.

Q. And did you say anything to Mr. Fish about that overdraft? A. I certainly did.

Q. Where did you see him about that? A. Either at the office or at the house when he was out there.

Q. Was anyone else present? A. There might have been, and probably was somebody else present; we did not generally talk over the business affairs before everybody; there possibly might have been somebody else there, but office affairs of the company were not talked over in front of anyone else; we probably had some conversation before somebody else, but not relating to private affairs.

Q. Did you show Mr. Fish the items of those overdrafts? A. I certainly showed him the amount.

Q. Did you show him the items? A. I could not say that; he would go to the bookkeeper after the meeting, and sometimes before, and we would go over the various accounts, my account amongst the rest, and verify the account and the amount.

Q. Did Mr. Fish offer the resolution to cross off that overdraft?

Mr. Harrison: Let him see the book.

Mr. Maxson: July 30, 1908.

A. If I can see the resolution I can tell you whether he made it or not.

Q. Cannot you tell me from your own recollection? A. My memory don't serve me as to that.

The Court: Is not the book in evidence?

Mr. Harrison: Yes, the book is in evidence; he has a right to see that book.

Q. You do remember that you talked the matter all over with Mr. Fish, and that he agreed to cross off this amount, don't you?

Mr. Harrison: Objected to; my point is, if that is a resolution in the book, that the witness has a right to look at it.

The Court: He is asking another question now.

A. Yes.

Q. And you say, I think you said, you did not show him the items? A. I showed him the total.

Q. And from whom did you get that amount? A. The bookkeeper.

Q. Who was the bookkeeper at that time, in 1908? A. I thought you spoke about 1907 a while ago.

Q. I am speaking of July 30, 1908, when the $2,000 was crossed off; do you remember who the bookkeeper was then? A. If I can see the entry in the book, I can probably tell you whose the handwriting was. (Witness looks at the book.) Coleman was up there until January of 1908. According to the cash book, Tichenor was there in January, 1908, so this resolution must have been Tichenor's.

Q. Who entered that minute, the minute of September 8, 1908, in the book? A. I did.

Q. It is in your handwriting? A. Yes, sir.

Q. Now, if you entered that minute in the book on that date, after having shown Mr. Fish the items, gross total of the items, why didn't you put the amount in the minute? A. I cannot say why; it is not there.

Q. The amount is left blank, isn't it? A. Yes, sir.

Q. Why didn't you enter the amount in the minute at that time? A. Some neglect.

Q. It was not because you did not know what the amount was? A. No, sir.

Q. You had shown the items to Mr. Fish? A. Yes, sir.

Q. Now, on July 19, 1910, and after this difference arose with Mr. Fish, you had a meeting with respect to this overdraft, didn't you? A. We had a meeting on whatever the date is there—the minutes show what the transactions were.

Q. Did you have a meeting during the year 1910? A. I think so.

By the Court:

Q. Was it your last meeting with Mr. Fish on this matter? A. I cannot tell you that.

Further cross:

Q. Was Mr. Fish present at that meeting? A. (Witness reading the resolution: "July 19, 1910—Annual meeting of stockholders.") Yes, Mr. F. K. Fish was there.

Q. Who else was present at that meeting? A. Myself and Mrs. Harrison and Mr. Knowles.

Q. Mr. Knowles is an attorney who was there in Mr. Fish's interest? A. Yes, sir.

Q. Who else? A. Mr. J. H. Harrison, representing myself.

Q. Anyone else? A. I don't remember.

By Mr. Harrison:

Q. Was not there another counsel for Mr. Fish present? A. Yes, sir, Mr. F. S. Taggert was there.

Further cross:

Q. Now, at that time a resolution was offered with respect to that overdraft of 1908, wasn't there? A. Yes, sir, there was a resolution offered in relation to the minutes of September 8, 1908.

Q. And how was that resolution offered; was it verbal or by written resolution handed up? A. It

does not say whether it was verbal or written; I have forgotten.

Q. Who offered the resolution? A. Either Mrs. Harrison or myself.

Q. Did Mr. Fish consent to its entry, vote in favor of its entry? A. I cannot say whether it was passed to a vote and was carried; the minutes don't say whether he voted for it or against it.

By the Court:

Q. You don't remember about it? A. No, sir.

Further cross:

Q. Would it refresh your recollection to tell you that a bill was prepared at that time for an accounting in connection with these various overdrafts by these attorneys who were there present? A. There was something started.

Q. Now, there appears on the books of July 31, 1909, a charge off of another $2,000 in overdrafts; how do you account for the fact that the minute book shows no resolution crossing that off?

Mr. Harrison: I think it is only fair that the counsel, instead of referring to the books of the expert accountant, he should refer to the books of the company which are in evidence; I think that is only fair.

Q. Is there any resolution in that minute book crossing off an overdraft of $2,000 of that date; that is, of July 31, 1909? A. I don't see any meeting here in 1910.

Q. Do you find any resolution on the book there, crossing off an overdraft for $2,000—an overdraft which appears on the books July 31, 1909? A. No, sir, I do not; there were some meetings that were held that I made minutes of, that were not put in

the book for some reason or other; Mr. Coleman had had some records of one or two meetings when he was secretary that he had neglected to put in the book, because he never expected any trouble to come from the affair, and we did not take such particular pains in putting them in; probably they were neglected. My recollection is, that probably we did have a meeting at that time, but I cannot find the minutes in the book.

Q. Who was secretary of the company at that time? A. When?

Q. At this date? A. I was then.

Q. You were secretary at that time? A. Yes, sir; I would be more apt to forget it than Coleman would be.

Q. You were entering the minutes in your own handwriting at that time? A. Yes, sir, and Mr. Tichenor had some.

Q. Do you think that there was a resolution that is not entered in that book, crossing off that overdraft of $2,000? A. I think there was a meeting at that year, and those matters were gone over, and his memorandums were never put in the book; such things have happened up there. Sometimes we neglected those things; sometimes they went for three or four months.

Q. Did you have any conversation with Mr. Fish, do you recollect, about that overdraft? A. That year?

Q. Yes. A. I certainly did.

Q. Where did you have the conversation? A. In all probability, at the office.

Q. Do you recall who was present there? A. At most of the annual meetings, certainly Mr. Fish and myself were there, and probably Mrs. Harrison; I think she came out to most of the annual meetings.

Q. Now, which one of the meetings, if you recall, was it that Mrs. Fish attended? A. I cannot say what meeting it was; the records don't show it; she was out there once at the house and stayed over night; I cannot tell you positively what meeting it was.

Q. Did you ever pay back any of these overdrafts to the corporation in cash?

Mr. Harrison: Does that include a check?

Mr. Maxson: No, I mean cash, in money—in currency.

A. The drawing accounts were charged up at the end of the year, and I did not pay them back; those were charged up to the drawing account; what was paid back to me were loans that I had made to the company for cash when they were short and needed funds; I advanced money to them at various times.

Q. In cash, or by check? A. Both ways.

Q. How are those advances shown by the books? A. All the loans to the company not shown on the books were shown on slips, and when the loans were paid up, the slip was destroyed.

Q. Then, if anyone loaned the Harrison Milling Company any money, you did not enter it in the books of the company? A. A personal loan we did not; it went on a slip.

Q. What do you mean by a personal loan? A. A loan by my wife or myself.

Q. A loan from any outsider was entered in the book, was it? A. No, sir, Mr. Fish made us a loan once, and we did not enter it in the book, I think.

Q. How about loans from the bank? A. They went through the books.

Q. And they were the only loans that did go through the books? A. There might have been others; the books show those records.

Amos Gould Harrison—By Defendants—Cross

Q. Now, did you have any source of income outside of your salary in 1909? A. I have had some other sources of income.

Q. From what? A. As executor of the estate of Mr. Mullen; my wife had an income; she had an income of sometimes as much as $1,500 a year, and sometimes less than that.

Q. At that time, did you own any real estate? A. What time?

Q. In 1909? A. My affidavit shows what time I sold the property at Caldwell; at the time I loaned the concern $2,000 in cash.

Q. Is that the last piece of real estate you owned? A. Yes, sir.

Q. You did not own any after that? A. Not personally.

Q. When did you sell this real estate at Caldwell? A. The dates are in my affidavit.

Q. I would like to have the date, if it can be found.

The Court: I think it is in evidence.

Q. I show you a check of the Harrison Milling Company, Defendant's Exhibit D-2 for identification, and ask you whether from that you can refresh your recollection as to the time when you sold the property? A. The property was sold either a few days before that, or at the same time; I think my brother gave me his check on the 16th or 17th of September, or, perhaps, the 18th; I made out this check, as the firm needed the money, and let them use it.

Q. Won't your bank book show when you received the check from your brother for this property? A. Yes, sir.

Q. Point out in the check book where it is shown. A. I don't know whether it is here or not. (Witness

examines the check book.) On September 19, I received the check from J. H. H. for $1,975.

Q. And was that the selling price for the real estate?

Mr. Harrison: I think, if the Court please, it is immaterial as to what the consideration price for this house was, whether I paid him $2,000 in cash and assumed a mortgage of $15,000, or vice versa.

The Court: What is your suggestion in regard to it?

Mr. Maxson: This was all brought out on the direct examination, showing the transaction between Mr. Harrison, where the money came from that he loaned the corporation.

The Court: I will allow him to answer; it was direct examination; go ahead, answer.

Q. (Question read.) A. No, sir, that was not the selling price.

Q. What was the consideration? A. It was more than that——

Mr. Harrison: I may state to the Court, that there was a mortgage on the house, but whether the amount was $3,300 or $4,000, I don't know; it was taken subject to a mortgage, and this was the cash over and above the amount of the mortgage, whatever that was, with some interest.

The Court: This $1,975?

Mr. Harrison: Yes, sir. If the Court desire me to get up the exact figures, I can get it. I fail to see any materiality in it at all.

Mr. Maxson: It is for the Court to say about that.

Q. How soon after you received this check from your brother, did you make this loan to the company? A. The check shows the date I gave it to the company.

Q. When did you receive the check from your brother?

The Court: September 19th, wasn't it?

Mr. Harrison: It shows on the stub, I think, September 19th.

Q. And what year is that? A. It don't state there.

Mr. Maxson: Is there any way of finding out what the year was?

Mr. Harrison: This does not seem to be comprehended within the issues at all.

The Court: I am allowing the question.

A. This check will tell me.

Q. You can answer that question from that book. A. 1906, I probably deposited that on the 18th or 19th——

Q. Don't your book show that was 1905? A. That check is way over here.

Mr. Maxson: Will you produce the book of the Montclair Bank which you offered in evidence, showing when these deposits were made?

Mr. Harrison: I will; I would like to have it in writing, though, as well as the other things you want.

By the Court:

Q. What year is that? A. 1906.

Further cross:

Q. When did you receive this check from your brother? A. I think it was the same day I made

this check out (referring to check dated September 18, 1906).

Q. But this entry of the receipt of the check from your brother, September 19, without any year, is four pages ahead of the stub of the check to the Harrison Milling Company of September 18, 1906, and across the page from this entry, the stubs show that the checks were being drawn in 1905; is that so? A. I don't know how many sheets; I will see —it is on the fifth sheet.

Q. And the only deposit after that appears on October 3d, cash $20? A. It is, according to the check book.

Q. From that time on you made no deposits, and your book does not show any until you drew this check of $2,000? A. The books show deposits all along since that.

Q. Does your book show any deposits between that last item of cash, $20, and the time when the stub appears in the book for this check of $2,000 to the Harrison Milling Company?

Mr. Harrison: Objected to.

A. According to the books there are no deposits made from September 18 to October 3d.

Q. Is there anything on that book by which you can tell the year when you made those deposits, any of them? A. I can verify it by the books of the Bank of Montclair.

The Court: Answer from the book; don't talk about the Bank of Montclair.

A. There is no year on them at all; just the month and day.

Mr. Maxson: Is that book in evidence, Mr. Harrison?

Mr. Harrison: No; but we are perfectly ready to have it go in.

Mr. Maxson: Well, let us have it in.

Mr. Harrison: We produce it and put it in evidence.

Marked "Exhibit A-B-C-2, C. E. R."

Q. Now, did I understand you to say that you did have an extra source of income in 1909, outside of your income from the corporation—anything that you did not have in other years?

Mr. Harrison: I object, on the ground that this has been gone over in great detail; it is entirely immaterial.

The Court: The objection is overruled.

A. I said I had some income outside, yes, sir.

Q. And was it a substantial amount; I mean was it a large amount, or a small amount? A. It was a fair amount.

Q. About how much? A. I could not tell you the exact amount; it was the matter of an estate.

Q. Was it $500 or $1,000? A. I could not tell you, because the estate was only wound up a short time ago, and I used to make drawings on account.

Q. Cannot you tell us whether it was less or more than $1,000? A. Well, probably a little less than $1,000.

Q. Were you one of the executors of the estate? A. Yes, sir, I was and am.

Q. Who was the other executor? A. Mrs. Mullen.

By the Court:

Q. What estate was that? A. The estate of H. Mullen.

Further cross:

Q. Did you have some conversation with Mr. Nasmyth, the expert accountant, that went out for Mr. Fish to make an account about this transaction of the $2,000 check? A. I did, yes, sir.

Q. And did you show him your check book? A. Yes, sir, I showed him the check book.

Q. Referring to Exhibit A-B-C-2? A. I showed him that check book, yes, sir.

Q. What did you tell him about this $2,000 check? A. I told him I drew it on that date and loaned it to the company, and put a slip in the drawer for it.

Q. Did you tell him that you put the cash in the safe? A. I gave the concern the check, put the check in the cash drawer; the credit was put on a slip.

Q. And shortly afterwards, did you a discount to the same bank for $2,000? A. I won't say how long after; the books will show that; the cash books will.

Q. You remember you discounted a note for $2,000? A. I have discounted lots of them for $2,000; I don't think I did about that time, because this loan helped us out.

Q. Didn't you tell Mr. Nasmyth that that money was put in the safe in cash and used as you needed it from time to time? A. I did not; do you mean the firm or myself? I drew the check.

Q. I have asked you whether or not you told Mr. Nasmyth that you put this cash in the safe; Mr. Nasmyth has testified that you did. A. I told Mr. Nasmyth I made out the check and gave it to the concern, and deposited it with the firm; the same day it was put on the slip.

Q. That is what you told him? A. Yes, sir.

Q. What brought about this discussion; how did

you happen to tell him anything about it? A. Because he asked me.

Q. How did he ask you? A. I don't know.

Q. Wasn't it because he did not find any credit to you on the books of the company for $2,000; didn't he tell you he did not find any credit for this $2,000 on the books of the company? A. I don't remember about that.

Q. You don't know about it? A. He asked about the transactcion, and I explained it to him as near as I could.

Q. You don't remember whether he told you that he did not find any credit to you on the books of the company? A. I don't say that he did or did not.

Q. And you don't know why you happened to show him these personal transactions of yours? A. Because he asked me to show them to him; he asked something about the check, and I showed him the stub and explained it as much as I could.

Q. Do you mean he asked you about your personal check? A. He did, yes, sir.

Q. Then, did he have your personal check book to examine at that time? A. Yes, sir, I threw it out, and he had it as long as he wanted it.

Q. When did he ask you for your personal check book? A. Some time when he was there making the audit.

Q. What reason did he give for asking for your personal check book? A. I don't know what reason, but he asked me if he could see it.

Q. Didn't he call your attention especially to this item, when he asked to see your check book? A. He asked me about that $2,000 check, and I showed him the check book, and that is all I know about it.

Q. And he referred to your check when he asked you for it, without having seen the check book at

all, and without there being any entry in the books of the company, to show this transaction?

Mr. Harrison: Objected to.

The Court: The latter part of the question seems to be somewhat confusing to the witness, I guess; I think you can state the question over; the question is perfectly relevant.

By the Court:

Q. Did he speak about this $2,000 check when he asked you for your check book? A. During his investigation he came across the affair of the stock transaction, and he asked me what paid for it; he asked me what price I paid for it.

Q. What did you do or say? A. I told him I had given my own personal check to the concern long previous to the stock transaction, lending it to them, and he asked me if I had the check book, and I said "Yes," and I went to the desk and got it and showed it to him; I asked him if he wanted to see the check, and he said "No." I cannot answer it any plainer than that.

Q. Did your brother, Mr. J. Henry Harrison, make you or the company any loans about that time; did you have any loans from your brother, or did the company? A. I had a number of persons who, when we were short, would help us out; I don't think he loaned us any about that time.

Q. Did he between that time and 1909? A. I cannot tell; if I was short and asked him, he would let me have it for the firm; most any of my friends would.

Q. You had some discussion with Mr. Fish about Mr. Tichenor, didn't you, some time during the time Mr. Fish lived out there at Montclair? A. Yes, sir.

Q. And he asked you to discharge Mr. Tichenor? A. Under certain conditions.

Q. Answer the question; did he ask you to discharge Mr. Tichenor or not? A. Not as a strict demand, no, sir.

Q. What did he say about it? A. He spoke about Mr. Tichenor's coming there so late in the morning, and said that he had spoken to Mr. Tichenor himself, and that Mr. Tichenor had promised him that he would come earlier; and Mr. Fish said, "I have taken upon myself to increase his salary five dollars a week on the promise that he will come earlier, and Bert will be all right."

Q. What did he say about discharging him? A. He said, previous to that, he said, "I wish that Bert would come earlier, and if not, then you had better bounce him"; and I said, "I don't want to do that; he is competent"; and he said, "I will speak to him"; and he spoke to him and increased his salary.

Q. Didn't he demand of you, as president of the company and one of the directors and stockholders, that Mr. Tichenor be discharged? A. I have answered that as near as I know how.

Q. (Question read.) A. He did on certain conditions.

Q. What conditions? A. First off, he said Mr. Tichenor came there so late, that we ought to have someone else, and he said, "If you cannot get him to do it, you had better bounce him," and I said, "I don't want to speak to him about it," and he said, "I will," and afterwards he spoke to him and then increased his salary five dollars a week—Mr. Fish told me about this.

Further cross:

Q. Didn't you have some conversation with Mr. Fish in January, 1910, about Mr. Tichenor, when

Mr. Fish told you that he had requested Mr. Tichenor to balance the books for his benefit, and that Tichenor refused to do it? A. Mr. Fish did not say anything to me about it; Mr. Tichenor told me about it:

Q. Then you knew that Mr. Tichenor had refused to balance the books for the president of the company, when he requested him to do so? A. He spoke to me about it, and it was impossible to do it at that time.

Q. And you sustained him in not doing that? A. We talked over the matter and did not think it was feasible to do it; we explained to Mr. Fish that it was not feasible.

Q. And wasn't it after that time that Mr. Fish requested that Mr. Tichenor be discharged? A. I don't think so; you see it was not the end of our fiscal year, and it was difficult to do it.

Q. When you went out to purchase this stock from the Beyeas—— (Question withdrawn.). How long before you went out to purchase this stock from the Beyeas did you see and discuss the matter with Mr. Fish? A. A number of times.

Q. How long before? A. He talked about the stock ever since he came in the corporation, about getting it.

Q. When was the last time before you went out to the Beyeas that you had a talk with Mr. Fish about it? A. Probably a short time before.

Q. And where was this talk at? A. I won't say whether it was New York or Montclair.

Q. Will you say who was present, if anyone, besides you and Mr. Fish? A. No, sir.

Q. What was the conversation? A. The conversation was, that I was going to Scranton to get the stock.

Q. What did Mr. Fish say about it? A. He approved of it.

Mr. Maxson: I object; that is the way he has told every conversation that he has related.

Q. Tell us what you said and what Mr. Fish said. A. That is so long ago, that I can only tell the main parts of it; I cannot tell exactly the conversation between us; I either went to New York, or, I think, possibly, I went to Scranton; I went to New York and told Mr. Fish that I had learned from my sister-in-law that I could get the stock, and was going out after it.

Q. Now, then, you recall—I am directing your attention to the last time you had a conversation with Mr. Fish before you went out to the Beyeas to purchase this stock? A. Probably it was, and probably it was not the last time.

Q. Do you remember the conversation you had with Mr. Fish at the time immediately preceding the purchase of the Beyea stock? A. I remember some parts of it.

Q. What was it? A. That I either went to New York to see him, or else he was at Montclair.

Q. What was the conversation? A. I told him that I could get this stock now, probably, around —I forget the figures; I, however, stated the figures, and it was agreeable to him that I should get it, and he said if I had to pay a little above par—or the expenses on it—to charge it up to the general expense account, and if I did not have the money at that time, that if he had the cash, he would gladly loan it to me, and I said, "Well, that $2,000 has been used up with the firm's bills, paying drafts, and so forth"; and he said, "When you come back, see me about it"; and when I came back and told

him the stock had been purchased and the price, he said at the time that he did not have the money. I asked him if he would indorse the note for the firm to borrow it, and he said, "No, you had better get it in the same way that you have heretofore"; that was on my wife's endorsement.

Q. Then you did discount a note for that purpose? A. Yes, sir, the firm's note.

Q. At that time? A. Yes, sir, to pay for the stock, and Mr. Fish knew all about it.

Q. You did not remember that a little while ago? A. I did not understand it.

Q. Then, at that time there was not only a conversation about the purchase of this stock, but you told Mr. Fish that you had loaned the company $2,000 as well; is that a fact? A. Yes, sir.

Q. Is that the first time you told him you had made a loan of $2,000 to the company? A. No, sir.

Q. When did you tell him before that? A. At the time I loaned it—during that time.

Q. Where did you see him? A. Either in New York or Montclair.

Q. Was it customary for you to tell Mr. Fish of the loans made to the company? A. When he came out to spend a few hours with us, he generally investigated lots of things and looked over them, and asked questions, and I explained to him.

Q. That don't answer the question. A. I could not tell him every single operation.

Q. Where did you tell him about this loan of two thousand dollars? A. Either in Montclair or New York.

Q. You cannot remember which place? A. No, sir.

Q. Can you tell us anything about the conversation? A. No, sir, I cannot; I apprised him of the

fact that I had sold this property and received the check from my brother and had given the check to the Harrison Milling Company, and they were using it until such time as I could get this stock.

Q. Then the stock transaction was discussed as well? A. Probably so.

Q. Isn't it a fact that it was? A. Probably.

Q. Then, you loaned the company this $2,000 with the idea of using it to purchase for this stock? A. Yes, sir.

Q. And not because the company needed this money? A. The company did need the money; the company used the money until such time as I got the stock.

Q. When you loaned this money to the company, why didn't you have an account on the books for it? A. Mr. Coleman had charge of the books.

Q. Didn't you want to see that you were credited with $2,000 on the books of the company? A. I saw that it was on a slip.

Q. Did you make out the slip? A. My recollection is that I made out the check and handed it to Mr. Coleman, and he made out the slip, and made the deposit,—I gave him the check.

Q. Now, did you have anything to do with the entry of your overdrafts in the books, that is, with respect to the account in which they appear; did you tell him where to put it, in which account? A. I only had one account—my own personal account.

Q. Did you tell him to put it there? A. I left it to the bookkeeper; he took care of the slips and of the books.

Q. How did it appear on the company's account? A. It was charged to my individual account, whatever the drawings were.

Q. And you mean to say it did not appear on

the other accounts? A. At the end of the year, it would be charged off, according to the resolutions, and so forth.

Q. Now, how about the credits to you—where did they appear on the books of the company? A. In my individual ledger account.

Q. In your individual ledger account? A. Yes, sir.

Q. And nowhere else? A. I did not keep the books.

Q. Did they not appear sometimes in the merchandise account? A. Mr. Coleman's books show this.

Q. Do you know? A. Mr. Coleman took charge of the books.

Q. Didn't they appear sometimes in accounts receivable? A. I don't know, the book will show.

Q. Do they appear sometimes in the profit and loss account? A. I said I don't know; the books will show it.

Q. Did you have any system whereby these overdrafts were entered in any one certain account? A. Mr. Coleman had a system; he charged all the charges made to my personal account.

Q. Then, if the books do show that these overdrafts of yours appear in three separate accounts, —the merchandise account, the profit and loss account, and the bills receivable or salary account,— was or was not that done by your direction? A. It was not done by my direction, no, sir.

Q. It was done simply because it was the custom of the business? A. The custom of Coleman. At the end of the year Coleman, with the resolutions —the account was credited so much money; I suppose sometimes he charged it to expense, and sometimes to merchandise, and sometimes to something else; that was his way of doing bookkeeping.

Q. And you had nothing to do with that? A. Mr. Coleman always kept the books according to his own ideas.

Q. And you did not pay any attention to it? A. Certainly, I paid some attention to the books.

Q. Did you examine them at any time to find out whether you were credited with these overdrafts that you charged off by resolution? A. I probably did.

Q. Then, what account would you look for, if any? A. Personal account.

Q. And you never looked to see whether they appear on the other accounts of the books? A. No, sir; the records show where they are charged off to, on the ledgers.

Q. Are you positive you have made no overdrafts from this corporation in addition to your salary, since September 30, 1909, when yourself and Mr. Fish's salaries were increased to $3,000? A. No, sir, except what I stated this morning; the firm still owes me some back salary, twelve or fifteen hundred dollars.

Q. Not moneys drawn in anticipation of your salary, but have you drawn any more than $3,000 a year from the Harrison Milling ompany since September 30, 1909? A. Not that I know of; I cannot think of any.

Q. Don't you know whether you have done it or not? A. I say at the present time that I cannot think of any; I think not.

Q. You are quite sure of it ? A. Yes, sir.

Q. If you did draw any more, you were not entitled to it, were you?

Mr. Harrison: Objected to, if the Court please; that may be a question of legal construction from these resolutions, from these

minutes, as to how much this man may be entitled to.

The Court: The objection is overruled.

Q. (Question read.) A. I was entitled to it, I guess.

Q. Then, that agreement between you and Mr. Fish, that you would take $3,000 a year apiece, and divide up all the other profits, do you consider not in force?

Mr. Harrison: Objected to. I think some reference should be made there as to what agreement he refers to; he says "that agreement."

Mr. Maxson: He has testified that a certain agreement was made on this date, September 30, 1909, that $3,000 apiece be taken, and that the balance——

The Court: Just answer the question.

A. I feel today, that if Mr. Fish would come and look over the books, and we found some profits, and he would agree to divide it, I think it would be in force; I would consider it so, today. But I have not not drawn anything above my salary since that time.

Q. You are sure about that now? A. I feel perfectly sure; there might be some little item that I have omitted.

Q. It is not as much as $865.91, is it? A. That account at the present time—I don't know when that started in——

Q. Between the 30th day of September, 1909, and the present, have you drawn as much as $865.91 in excess of your salary of $3,000? A. Not since then; that record don't show up there; I could tell if I saw the ledger there.

Mr. Harrison: Here is a minute book; with the permission of the Court, I will show this to the witness. (Shows book to the witness.)

The Witness: August 1, 1909, to $719.10—charge to date, $865.91; those charges were inclusive to July 19, 1910; that was previous to that resolution then.

Q. Those resolutions were all previous to that resolution, then? A. Yes, sir.

Q. You are sure about that? A. The way it looks here.

Q. You mean according to that statement that was pasted in the minute book, don't you? A. Yes, sir, I mean according to that statement.

Q. You mean that you are positive that all of that overdraft of $865.91 was previous to September 30, 1909, when you made that agreement with Mr. Fish?

Mr. Harrison: I object to that.

The Court: He said he thought it was before the agreement with Mr. Fish; that was his answer—as far as he could recollect.

Q. Do you know whether it was before or after? A. I cannot tell until I look at the account—the debits, then I can tell.

Q. Don't you, as treasurer of this corporation, and after an action has been begun in this court for an accounting—don't you know whether you drew any more money than your salary or not? A. I have only drawn the amount of my salary.

Q. You are sure of that now, are you? A. I said before that I felt perfectly sure.

Q. Then all of this overdraft of $865.91 was previous to the time that your salary began to run, September 30, 1909? A. I cannot tell exactly until I see the ledger account.

Q. Then you do know, as treasurer of this company, that you have not drawn any more than that $3,000?

Mr. Harrison: I object, your Honor; he has answered it several times.

Q. (Question read.) A. To my recollection, I have not; possibly I may have; I don't think so.

Q. You considered it proper, as treasurer of this company, after having made this agreement, and after this action had started, to draw any more money?

Mr. Harrison: Objected to; he has already answered that several times.

The Court: He is trying to get from this witness whether, as treasurer of the company, he thought that it was proper to take money outside of his salary. What is your answer to that?

A. I consider now the salary is sufficient, and I have not, to my knowledge, drawn any extra.

Q. Then you understand, don't you, that that alleged agreement, that agreement which you say you made with Mr. Fish to draw what you pleased, was terminated by that resolution passed on September 30, 1909? A. I explained this morning——

Q. Did you consider that that terminated it or not? A. I explained that this morning.

Q. Then, if the books show that there have been any overdrafts by you since September 30, 1909, it has been in pursuance of that agreement with Mr. Fish, has it? A. If they show that way, I suppose it does.

Q. Now, have you paid Mr. Fish the $3,000 salary? A. The books show how much he has been paid; he has been paid up to a certain time

Q. About when did you stop paying him? A. I cannot tell you that.

Q. You have not paid him anything since April, 1910? A. The books show the payments to him.

Q. You know you have not paid him anything since April, 1910? A. I don't know until I look at the books.

Q. You know you have not paid him anything since that meeting when his attorneys were there? A. To my recollection, he has not had anything since then.

Q. You signed the checks? A. Yes, sir; the books show when the last payment was made; my memory won't tell me when that time was.

Q. Now, will you tell us why you have not kept your agreement with Mr. Fish to take $3,000 each and divide up the balance of the profits; was it because of the advice of counsel that you have not paid Mr. Fish that money? A. I cannot say.

Mr. Harrison: I will answer that; it is by advice of counsel.

Q Then your counsel advised you not to pay Mr. Fish, but to take your part?

The Court: This man has not said that counsel advised him at all. He says everything he has done since that time was by advice of counsel.

Q. Did your counsel advise you to take this $3,000 and your profits in the company and at the same time not pay anything to Mr. Fish?

Mr. Harrison: I object; he has three details in that question. First, "Did he advise you to take $3,000;" second, "Did he advise you to take the profits," whatever that may be; third, "Did he advise you not to pay anything to Mr. Fish?"

By the Court:

Q. Did you take the profits of the company—any profits, if there were any? A. No, sir; I just took the salary, and that was all. My recollection was, that there was some order of the Court that I be paid a salary for running the business.

Further Cross:

Q. And you did not pay Mr. Fish anything? A. The books show whatever we have paid him; I have not paid him since July, 1910.

Q. Now, the company has not made any profit in the last two years, has it? A. It has made some, yes, sir; it has made some.

Q. Does these statements rendered to Mr. Fish show it? A. It should do so.

Q. I show you a paper, headed "Statement of Harrison Milling Company, July 31, 1912," and ask you if that is the last statement of account that was sent by the Harrison Milling Company to Mr. Fish? A. I would not say whether it is the last one or not.

Q. Is that the last one that was made up? A. Our fiscal year ends in August, 1913.

Q. No statement was made up on July 31st, 1913? A. We have not got there yet.

Q. Does that statement to which I have just called your attention show the profits and loss of the company for the year 1912? A. $772.84.

Q. And did you make up this account, or have anything to do with making it up? A. No, sir, I don't think I did; I probably made the inventory; that is about all I did to it.

Q. It shows, doesn't it, business conducted of $201,368.29? A. Merchandise sales, yes.

Q. And on that you made a profit of only two hundred and some odd dollars? A. It shows that.

Q. Did you have any large loses, bad bills, during that year? A. Probably we did.

Q. Where are they shown on this statement? A. I cannot show them on the statement.

Mr. Harrison: If the Court please, I would like to object to this line of inquiry going any further; this is going into the accounting.

The Court: A man has a right to an accounting, if it is shown that his partner, or the proper officer of a corporation, does not render him such statements as will enable him to ascertain the condition of the business affairs in the concern in which he is interested.

Mr. Maxson: And on the further principle that if there is any mismanagement of the corporation on the part of the persons——

The Court: I will take the testimony.

Mr. Harrison: There is no allegation made along these lines at all in the issues.

The Court: He is simply asking him whether there are any losses shown on this statement. That is all the question is.

Q. (Question read.) A. Well, probably I cannot tell unless I refer to previous years whether they are increasing; they are not itemized here I cannot tell from that statement about it; I can if I look at the ledger and see from year to year.

Q. Is this statement similar to those that you sent in previous years? A. I did not send them; the bookkeeper sent them; probably there is some difference in them. Our bookkeeper made out different kinds of statements.

Q. Now, on July 31st, 1911, another statement was rendered; was that by your direction? A. At times he would ask for statements, and we would always willingly give them to him, and at the end

of the year it was customary for the bookkeeper to render statements to all stockholders.

Q. But now, you have testified, haven't you, that you refused, or Mr. Tichenor refused, to give Mr. Fish a statement when he asked for it? A. No sir, he did not refuse to give him the statement.

Q. What did he refuse to give him? A. It may have had reference to closing the books; it was not any statement; we never kept anything from Mr. Fish.

Q. Will you account for the fact that in this statement which you now have before you, on July 31, 1911, your overdrafts are shown, and they are not shown in any other annual statement rendered to Mr. Fish annually? A. The previous bookkeeper did not itemize that, and this statement was gotten up by the advice of our auditor, Mr. Wenk; he gave this form.

Q. Wasn't it because some question had arisen between you and Mr. Fish? A. I did not ask him the cause; he gave us that form.

Q. You had never personally thought it necessary before to set forth what your overdrafts were in any of these statements to Mr Fish? A. He knew about them, without being on the statements; they were included in the open accounts.

Q. As a matter of fact, they were included in three accounts, were they not, on the books?

The Court: He has answered that those were included in three accounts, I think.

Mr. Maxson: I ask to have this marked for identification, "Exhibit B-C-D-1 for Identification."

(So marked.)

Q. Will you look over these accounts I show you and I ask you whether those are statements of ac-

count sent by your direction to Mr. Fish? A. They were sent to Mr. Fish by the bookkeeper.

Q. Look them over. A. I don't know whether it was at my suggestion or not; when the statements were rendered Mr. Fish got one of them.

Q. Are they statements of the Harrison Milling Company to Mr. Fish? A. They all look to be; they are all marked "Harrison Milling Company;" they look to me to be statements that came from the office; there is one that is not marked "Copy" or anything; it looks like one of ours.

Q. Here is one that has some writing on; that is the statement of 1908 and 1909, Harrison Milling Company; of course, that writing was not on there at the time it was sent from the Harrison Mililng Company? A. No, sir.

Q. There have been some changes on the statement of January 31, 1910? A. Yes, sir.

Mr. Maxson: It is changed from 1909 to 1910.

Mr. Harrison: Mr. McCarter will be home on the 31st of May, and he said he would give the preference right away to this case.

The Court: I will put this down for June 6, 1913.

(A later date has since been fixed by the Court.)

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK K. FISH,
Complainant,
and
A. GOULD HARRISON *et al.*,
Defendants.

On Bill, &c.,
Testimony.

Continuation of the taking of testimony in the above entitled cause, at the Chancery Chambers, Newark, New Jersey, on the 26th day of June, nineteen hundred and thirteen, before Hon. Vivian M. Lewis, Vice-Chancellor.

Appearances:

EDWARD MAXSON, Esq., for the Complainant.

CHURCH & HARRISON, Esqs., by Mr. J. HENRY HARRISON, for the Defendants.

Mr. Harrison: Mr. McCarter cannot be here to-day. The original date fixed was the sixth of June, then it was changed to the thirteenth of June, and then from the thirteenth of June it was postponed to the twenty-sixth of June. I saw him a day or two ago and went over the matter with him, and he said that he thought the Court of Errors' assignment would not strike him, but yesterday I got word from him that he had to go to the Court of Errors to-day and to-morrow. Now, I am anxious to get the matter disposed of, but I do not feel that if it is necessary for me to go on the witness stand, that I should be put

in the position of examining myself; and I do not know what the Court's idea is in regard to going on to-morrow; I am perfectly willing to go on to-day.

The Court: I will give you a chance to be examined by Mr. McCarter, of course.

Mr. Harrison: I might say in passing that I received notice from Mr. Maxson to produce certain things to-day. The letter was delayed in transmission somewhat—dated June 24th; it was not forwarded to me until this morning. Now, there may be some failure on my part to produce all that Mr. Maxson asked for in that letter; I tried to bring everything he wanted. I would like also to ask the Court's indulgence in the matter of the production of some of the witnesses. There is a Mrs. Curtin here who would like to get away as soon as possible, if agreeable to the Court.

The Court: All right.

ELIZABETH CURTIN, sworn in behalf of the defendants, testified as follows:

Direct examination by Mr. Harrison:

Q. You live in the Town of Montclair? A. Yes, sir.

Q. How long have you lived there? A. Ten years

Q. And you were once employed by the Harrison Milling Company? A. Yes, sir.

Q. And between what dates were you so employed? A. Between 1908 and 1909.

Q. Do you remember the months? A. From November, 1908, until November, 1909.

Q. And what was the general nature of your work there? A. Stenographer.

Q. Did you have anything else to do? A. Helped with the books.

Q. Who else was employed there at that time in the office? A. Mr. Tichenor.

Q. Is he the gentleman who sits here at my right? A. Yes, sir.

Q. Do you know Mr. Fish, the complainant in this case? A. Yes, sir.

Q. How long have you known him? A. Oh, about three years or more—a little more

Q. When and under what circumstances did you meet him? A. At the Harrison Milling Company.

Q. How soon after you started to work did you meet him? A. Shortly afterwards—shortly after I came to the office.

Q. And between that time and the time of your leaving, how often did you see him at the office? A. Very often.

Q. Do you remember when he came permanently to Montclair? A. About the first of September, 1909.

Q. Prior to the first of September, 1909, when you saw Mr. Fish at the office, what did he used to do? A. He always looked over the books.

Q. And with whom did he look over the books?

Mr. Maxson: I object to the question as leading.

By the Court:

Q. Did he look over the books with anybody in there? A. Yes, sir.

Further direct:

Q. With whom did he look over the books of the Harrison Milling Company at its office? A. With Mr. Harrison and Mr. Tichenor.

Q. Can you say how many times you have seen him looking over the books either with Mr. Harrison or Mr. Tichenor? A. Every time he came to the office he did.

Q. And how long did he usually remain at the office? A. Sometimes a couple of hours, and sometimes the afternoon.

Q. Do you remember which books they looked over? A. All of them.

Q. Do you remember any particular accounts that were inspected on any of these occasions? A. They inspected Mr. Harrison's personal account.

Q. Do you know how many times they inspected his personal account? A. I only remember one time.

Q. And with whom did Mr. Fish inspect Mr. Harrison's individual account? A. With Mr. Tichenor.

Q. And how long were they inspecting the account on the occasion that you recall? A. About fifteen minutes.

Q. What did Mr. Fish say at that time? A. He seemed to think that everything was satisfactory.

By the Court:

Q. Not what he seemed to think—what did he say? A. I don't remember just what he said.

Further direct:

Q. If you fail to remember the exact words of his conversation, do you remember the purport of it?

Mr. Maxson: I object to the witness giving the purport of the conversation.

By the Court:

Q. Can you remember any part of the conversa-

tion or anything that he said about the account? A. He said it was all right.

Q. You heard him use the words "All right," did you? A. Yes, sir.

Further direct:

Q. Now, after Mr. Fish came to the office permanently, as you say, about the first of September, and until the time you left, what did Mr. Fish do about the office? A. He always looked over the books—that is about all.

Q. Did he look over them alone, or with somebody? A. Sometimes alone, sometimes with the bookkeeper.

Q. And sometimes with anybody else? A. Sometimes with Mr. Harrison.

Q. Can you say how often, between the time of his coming there permanently and the time of your leaving, he looked over these books? A. He was always looking over them.

Q. That seemed to be his chief occupation? A. Yes, sir.

Q. What books did you work on? A. The journal—the day book——

Q. Did Mr. Fish ever look over the journal or the day book with you? A. No, sir.

Q. Did he ever use the books while you were working on them? A. Yes, sir.

Q. And what did he do, and how did he get possession of the books? A. He took them from us while we were using them.

Q. Where would he take the book? A. Back to his desk.

Q. When you say "back to his desk," where was his desk with reference to the desk that you were working at? A. At the rear of the office.

Q. How far in the rear of the office was it? A. A few yards.

Q. Would you say it was as far as from you to me? A. Just about.

Mr. Harrison: Counsel stands at a distance approximately fifteen feet from the witness, and the witness fixed the distance of counsel as the approximate distance of Mr. Fish's desk from the desk at which the witness was accustomed to work.

Q. I show you minute book marked "Exhibit C 1 for identification," and ask you if you have ever seen that book? A. Yes, sir.

Q. When and where did you first see it? A. In the safe at the Harrison Milling Company.

Q. In what portion of the office of the Harrison Milling Company at Montclair did the safe stand? A. To the side of the office.

Q. Which side? A. The left.

Q. That is, entering the office? A. Yes, sir.

Q. And can you say whether that is the north or the south side? A. No, sir, I don't know.

Q. In what portion of the safe did this book stand? A. Right in the front.

Q. In open view of anyone who passed the safe? A. Yes, sir.

Q. Have you ever seen this book in Mr. Fish's possession? A. Not that I recall.

Cross examination by Mr. Maxson:

Q. When did you say you began to work for the Harrison Milling Company? A. In 1908.

Q. What was the date? A. November.

Q. The first day of November, 1908? A. No, sir, it was not the first day.

Q. What date was it? A. I don't remember—sometime in November.

Q. Well, approximately—what part of November? A. Around the middle of November.

Q. How long did you stay there? A. Until November, 1909.

Q. When did you say Mr. Fish moved out to Montclair? A. About the first of September.

Q. What year? A. 1909.

Q. And how soon after he came out to Montclair did you see him making these examinations of the books? A. The next day.

Q. The next day after he arrived? A. Yes, sir.

Q. That would be about the second of September? A. Yes, sir.

Q. And was that the occasion when you heard him say the accounts were all right? A. No, sir.

Q. That was not the time? A. No, sir.

Q. Can you fix the date when you heard this conversation? A. No, sir.

Q. About when was it? A. I think that was before Mr. Fish came there permanently—before he came to live in Montclair.

Q. How long before? A. Perhaps a month or so.

Q. Then, in August, 1909, would you say? A. About July or August, 1909.

Q. And on how many other occasions did you see him examining the books? A. Very often.

Q. Every day or so? A. Yes, sir.

Q. Going over what period? A. All the account.

Q. From the time you came with the company? A. On each of his visits.

The Court: I do not think she understands the question.

Q. Did he come out there every day or two during the time you were with the company? A. No, sir.

Q. How often did he come there? A. About once a month.

Q. And with whom did he generally examine the books on those occasions? A. Either Mr. Harrison or Mr. Tichenor.

Q. And did you listen to the conversations that were going on? A. Not always.

Q. Can you relate any conversation that took place on any other occasion when he was there? A. No, sir.

Q. Then, this is the only conversation you ever heard? A. Yes, sir, the only one I remember.

Q. What especially recalls that to your recollection? A. I was standing right beside them.

Q. Were you looking over the account too, at the same time? A. No, sir.

Q. You were familiar with it? A. Yes, sir.

Q. Did you assist in keeping it? A. Yes, sir.

Mr. Harrison: I think that "it" should be defined.

Q. You understand we are referring to Mr. A. Gould Harrison's personal account with the Harrison Milling Company? A. Yes, sir.

By the Court:

Q. Did you assist in keeping that account? A. Yes, sir, in a way.

Q. Did you assist in keeping it all the time from November, 1908, to November, 1909? A. Yes, sir.

Further cross:

Q. Then, you were familiar with the account during that time? A. Yes, sir.

Q. Did you have anything to do with keeping the slips that were in the drawer? A. (No answer).

Q. When, after your attention was called to these

slips, did you make the entries in the books from the slips? A. I did not make them.

Q. Then, you never made any entries from those slips in the drawers? A. No, sir.

Q. Where did you get the information from which you made the entries of Mr. Harrison's personal account? A. I did not make any entries.

Q. What did you do with respect to this account? A. Mr. Tichenor and I used to post the books together—I used to call off to him.

Q. Is that all that you had to do with it? A. Yes, sir.

Q. Did you have anything to do with making up the annual statements of the concern?

Mr. Harrison: I think that is hardly competent cross examination; it was not touched upon on direct examination.

The Court: The objection is overruled.

Q. (Question read). A. No, sir.

Q. What did you do with respect to the books? A. We posted the books from one book to another.

Q. Did you do anything else about them? A. No, sir.

Q. Nothing whatsoever? A. No, sir.

Q. Except to help post them? A. Yes, sir.

Q. And then you just read from one book, and the entries were made by somebody else to another book? A. Yes, sir.

Q. That is all you ever had to do with it? A. Yes, sir.

Q. You never made any entries in your own handwriting in the books? A. Yes, sir.

Q. What entries did you make? A. It was when the bookkeeper was away.

Q. When was that? A. Whenever the bookkeeper was away.

Q. Did you make the entries in the books whenever the bookkeeper was away? A. Yes, sir.

Q. At that time did you have anything to do with Mr. Harrison's personal account? You did not make any entries in Mr. Harrison's personal account when the bookkeeper was away? A. Not that I recall.

Q. You said on direct examination, as I recall, that you kept the journal and the day book?

Mr. Harrison: Assisted in keeping the journal and day book.

The Witness: I helped to.

Q. And you made entries in your own handwriting in the journal and day book? A. Yes, sir.

Q. And in Mr. Harrison's personal account? A. No, sir, that was kept in the ledger.

Q. Anywhere else? A. No, sir, not that I know of.

Q. It was not kept in the cash book?

Mr. Harrison: I object to this line of testimony, first, on the ground that it is not proper cross examination; second, on the ground that this witness has not been shown to be familiar or competent with the books.

The Court: She says she does not know anything about this account herself; she has never kept it.

Mr. Harrison: On three occasions, Mr. Maxson has gone back to that same question.

The Court: The objection is overruled.

Q. (Question read). A. I don't remember; I was not familiar with it.

Q. Do you remember the occasion when Mr. F. K. Fish and Mr. L. H. Fish came on there to the

Harrison Milling Company? A. I remember seeing them.

Q. Do you remember any conversation they had on that occasion? A. No, sir.

Q. Do you remember what they did? A. No, sir.

Q. Do you know whether they looked at the books or not? A. I don't remember.

Q. Was that after Mr. Fish came to Montclair to reside, or before—do you know? A. I think it was after.

Q. Now, what books did Mr. Fish examine on the second of September, 1909, when you saw him there?

Mr. Harrison: She said she did not remember what the conversation was, or whether they examined the books.

The Court: What is the objection to the question?

Mr. Harrison: Because it has been answered before, if the Court please.

The Court: Then it is repetition. I will allow it to stand if that is the only objection to it.

Q. (Question read). A. If that was the day, it was the ledger.

Q. And who were with him at the time? A. Both Mr. Harrison and Mr. Tichenor.

Q. And did you say you heard any conversation? A. No, sir.

Q. How long were they at the books on that day? A. I should think half an hour.

Q. Now, on the occasion when you heard part of the conversation, what especially directed your attention to the books so that you came up to look them over?

Mr. Harrison: I object to that question; he is putting words in the witness' mouth which have not been testified to.

Mr. Maxson: I will withdraw the question.

Q. On the occasion when you say you heard Mr. Fish say the account was all right, where did you stand, with respect to Mr. Fish and Mr. Tichenor? A. At the same desk.

Q. How near to them? A. A few feet away.

Q. Near enough so that you could see the account they were looking at? A. If I looked at it.

Q. Did you look at it? A. No, sir.

Q. Then, how did you know whose account was being examined? A. They talked about it.

Q. Did you hear them talk about it? A. Yes, sir.

Q. What did they say? A. Mr. Fish asked questions and they were explained, and he said it was all right.

Q. What did he say; let us have the conversation? A. I don't remember the questions.

Q. What did Mr. Tichenor say? A. I don't remember.

Q. Then, the only thing you remember about it is, that he said it was all right? A. Yes, sir.

Q. Have you had any reason to refresh your recollection between that date and the present time? A. I don't understand your question.

By the Court:

Q. Have you had reason to refresh your recollection about this matter between that date and the present day? A. No, sir.

Further cross:

Q. And that is the only part of the conversation

that you can remember, although they talked for 15 minutes? A. That is all I can remember.

Redirect examination by Mr. Harrison:

Q. You recall that the account was discussed? A. Yes, sir.

Q. And can you say in what detail or to what extent the account was talked about? A. I think it was about a cash slip that had been charged to Mr. Harrison.

Q. The cash slips which had been charged to Mr. Harrison? A. Yes, sir.

Q. And in connection with the examination of the account, were some cash slips taken from the drawer and inspected and discussed? A. Yes, sir.

Recross examination by Mr. Maxson:

Q. What was said about the cash slips? A. I think Mr. Fish asked what it was, and they told him it was for cash drawn out by Mr. Harrison, and they charged it to his account.

Q. How many of those cash slips were there at that time? A. I think there were three.

Q. And do you remember the amount of them? A. No, sir.

Q. You never had anything to do with the cash slips, you said? A. Yes, sir, I did.

Q. You did have something to do with them? A. Yes, sir.

Q. When did you have anything to do with them? A. I had often made out one for Mr. Harrison.

Q. And after you had made it out, what did you do with it? A. Put it in the safe.

Q. Did you ever make the entries from those into the other books? A. No, sir.

Q. How frequently did you make out cash slips for Mr. Harrison? A. Two or three times.

Q. And on these occasions did you give the money to Mr. Harrison that was represented on the slip? A. Yes, sir.

Q. Two or three times during the period between the middle of November, 1908, and the 11th of November, 1909; is that all? A. I don't understand the question.

Q. Do you mean to say those are the only times that you made these slips out for Mr. Harrison, two or three times? A. Yes, sir.

Q. During the whole period? A. Yes, sir.

Q. Did you make any slips out for anybody else? A. Yes, sir.

Q. For whom? A. For the employes.

Q. Different employes came in and got cash? A. Yes, sir.

Q. And did you take in the cash that was put in the drawer? A. No, sir.

Q. Who took it in? A. It was generally kept out of their salary.

Q. I mean to say, did you get the money that you disbursed when you made these slips? A. Out of the cash drawer, or out of the safe.

Q. Then, was the money kept in the safe as well as in the cash drawer? A. Yes, sir.

Q. Who, besides you, had access to that? A. Mr. Harrison and Mr. Tichenor.

Q. And any one of you, then, might take money from the safe or the cash drawer, and make out a slip for it? A. Yes, sir.

Mr. Harrison: Objected to on the ground that he is calling for a conclusion of the witness.

The Court: The objection is sustained.

Q. Was there any reason why either you or Mr.

Harrison or Mr. Tichenor could not take this money out and make out a slip for it on any occasion?

Mr. Harrison: Objected to.

By the Court:

Q. Were you told yourself, instructed, not to take out the slip? A. I only took it out when Mr. Harrison told me to.

Further cross:

Q. Then, were all of these disbursements only when Mr. Harrison told you to? A. By me, yes, sir.

Q. You never made any on any other occasion? A. No, sir.

Q. Who took in the cash drawer and in the safe? A. Either Mr. Harrison, Mr. Tichenor or myself.

Q. And what did you do, after you received the cash, with respect to entering it in the book, or any such thing as that?

Mr. Harrison: If the Court please,——

The Court: Well, she can testify to this.

Q. What did you do with the cash? When you received the cash which was coming to the Harrison Milling Company, what did you do with respect to entering it in the book—anything? A. Yes, sir.

Q. What book did you enter it in? A. If it were a small payment, we put it in the day book.

Q. Did you, yourself? A. I would, if it was a small sale.

Q. And if it were a large payment, what did you do with it? A. I generally left to Mr. Tichenor.

Q. Did you make the entry yourself in the cash book? A. No, sir.

Q. Then you carried it in your memorandum un-

til Mr. Tichenor came back? A. I put the cash in the book itself, and let him enter it.

Q. You left the cash in the book itself? A. Yes, sir.

Q. And closed the book up? A. Yes, sir.

Q. Did you do that with all the cash you received during the time Mr. Tichenor was away from the office? A. When he was not there.

Q. How long did he stay away? A. While he was getting his lunch.

Q. Is that the only time he was away from the office during the time that you were there? A. Or if he was sick.

Q. How long was he away when he was sick? A. I don't remember.

Q. Well, approximately? A. A couple of days.

Q. Two or three days at a time, perhaps? A. Yes, sir.

Mr. Harrison: Now, if the Court please, I don't want to be captious about my objections, but here is a witness who has testified to certain things on direct examination, and we have permitted her on cross examination to take up matters which have no connection with——

The Court: He has a right to test the credibility of this witness, also the right to draw out any facts which have been developed partially on direct examination, which tend either to corroborate or to contradict her. It is simply an explanation, that is all. I will allow the question to stand.

Q. And how frequently was he away sick? A. Twice, I think.

Q. Twice during that period? A. Yes, sir.

Q. And were you the only one who received money during the time he was away? A. No, sir.

Q. Who else received it? A. Mr. Harrison.

Q. Do you know what Mr. Harrison did with respect to entering it in the books, as to whether or not he did it? A. I think he always entered it.

Q. Did you ever see him making entries in the books? A. Yes, sir.

Q. Of the receipt of cash? A. Yes, sir.

Q. What book did he enter it in? A. The cash book.

Q. Can you fix the time when Mr. Tichenor was away? A. No, sir.

Q. Can you tell approximately when it was? A. No, sir.

Q. Was it early during the period you were there with the company, or during the latter part of the time? A. Towards the latter part of the time.

Q. In the summer, or in the fall? A. I don't know.

Q. You cannot tell? A. No, sir.

Q. But you never made any entry yourself in the cash book of the cash received? A. I think I made a couple.

Q. But it was not your custom to do it? A. No, sir.

Q. Under whose direction did you leave the cash in the book without entering it up,—if anyone's? A. Nobody's.

Q. You did that of your own will, and without any directions from anybody? A. Yes, sir.

Q. I understood you to say that sometimes you put it in the safe—is that so? A. I have put money in the safe.

Q. Then, the putting it in the book was not uniform; you did not do that all the time?

The Court: She did not say on her direct examination that she put it in the safe; she said she took money from the safe.

Q. Were the drawers in the safe and the cash drawer kept locked? A. Yes, sir.

Q. Who had the keys to them? A. It was generally in the box.

Q. In what box? A. In the drawer of the safe where the money was kept.

Q. The key was in the drawer where the money was kept? A. Generally—in the lock.

Q. Oh, in the lock of the drawer—then there was only one key? A. That I know of.

Q. Then, anybody in the office might have access to the cash? A. No, sir, not necessarily.

Q. What was to prevent them?

Mr. Harrison: I object to that.

The Court: The objection is sustained.

Mr. Maxson: The safe might be locked—the question may not have been well-framed, but it seems to me the subject matter was perfectly proper.

Q. Was the safe kept locked when the key was in the drawer, or was it left open? A. Sometimes it was left open.

Q. How about the cash drawer; did that have a lock on it? A. Yes, sir.

Q. Who had the keys to that? A. It was a patent lock.

Q. What kind of patent lock was it? A. Underneath the drawer.

Q. Who knew how to open it—do you know?

Mr. Harrison: If the Court please——

By the Court:

Q. Did you have access to it? A. Yes, sir.

Q. Did anybody else in the office have access to it? A. Mr. Harrison and Mr. Tichenor.

Further recross:

Q. Anyone else? A. No, sir.

Redirect examination by Mr. Harrison:

Q. Did Mr. Fish have access to the drawer? A. Yes, sir.

Q. Did Mr. Fish ever take money out of the drawer? A. I don't recall.

Q. Did you ever observe any of these slips to which you referred, with Mr. Fish's name on them? A. I do not recall any time.

Q. Do you ever recall making an entry on a slip or other cash withdrawal of Mr. Fish? A. No, sir, I do not.

Q. Do you ever recall making an entry in the cash book or journal from a slip, of a cash withdrawal by Mr. Fish? A. No, sir.

Q. Do you ever recall Mr. Fish making an entry on a slip of withdrawal of cash made by him? A. No, sir.

Recross examination by Mr. Maxson:

Q. Do you say you have seen Mr. Fish have access to the drawer, cash drawer? A. Yes, sir.

Q. Have you ever seen him take money out of it? A. Not that I recall.

Mr. Harrison: Now, I requested Mr. Howe of the Montclair Bank to be here with his exhibits. Mr. Howe is a busy man, and would like to get away.

Joseph A. Howe—By Defendants—Cross

Mr. JOSEPH A. HOWE recalled.

Cross examination (continued) by Mr. Maxson:

Q. You remember a check for $115.00 which was discussed when you were on the witness stand the last time here? A. I do not.

Q. Have you produced your book—have you your bank book showing the account of the Harrison Milling Company for the month of November, 1909? A. Yes, sir.

Q. Will you produce it? A. Here it is.

Mr. Harrison: There was no reference to the check for $115.00 on the direct examination; I presume that he makes him his own witness to that extent.

Q. Can you, by inspection of these check vouchers, state when they came into the Montclair Bank for payment? A. Yes, sir.

Q. Will you please say when these different checks were paid by the Montclair Bank? A. November 18, 1909.

Mr. Harrison: I object, on the ground, that the time of the payment of the checks by the bank has no possible bearing on these issues; checks are sometimes given and held up for a day, a week, a month or a year. So far as I can see, the time of payment has no bearing upon the issue, and is immaterial and irrelevant.

Mr. Maxson: It has no materialty if the checks were not paid promptly—if they happen to have been paid promptly, it is very material and a very important question in this case,—that is, whether or not this check for $115.00 was drawn under the circumstances and in the manner in which both the petitioner

and Mr. Harrison say it was drawn. Your Honor will recall that the entry was made in the cash book on the day previous to the date that the check was drawn.

The Court: I will allow it for the purpose of establishing custom, probably, in relation to these checks—their custom as to the entry in the books, I mean—I will allow the question for that purpose.

Mr. Maxson: Is there any objection to having these checks go in evidence as they are?

Mr. Harrison: No.

Mr. Maxson: Then, let us offer them in evidence.

Q. Are those all checks of the Harrison Milling Company? A. They are all checks of that company.

Mr. Maxson: We offer all the checks in evidence.

Q. Are those also checks of the Harrison Milling Company? A. Yes, sir.

Mr. Maxson: That is all the examination we can have of this witness unless we can have the book of the bank for November, 1909—the ledger.

Mr. Harrison: Anything else you desire?

Mr. Maxson: We want the book which shows the account of the Harrison Milling Company during the month of November, 1909.

Mr. Harrison: What will that show?

Mr. Maxson: The deposits and withdrawals.

Redirect examination by Mr. Harrison:

Q. I show you check of September 18, 1906, from J. H. Harrison to A. Gould Harrison, for $1,975.00,

and ask you if you can from the ledger of the bank, introduce in evidence what became of that check, and through whose account it passed? A. Yes, sir, I can say what became of it.

Q. Trace the course of that check. A. It is a check of J. H. Harrison——

Mr. Maxson: Before you proceed, how do you identify the signatures?

The Witness: Which particular signature do you refer to?

Mr. Maxson: Any of the signatures—take Mr. J. Henry Harrison's——

The Witness: Yes, sir.

Mr. Maxson: Is that his signature?

The Witness: Yes, sir; the check is endorsed for deposit, and I recognize that as being the signature of A. Gould Harrison; that check was deposited in the Bank of Montclair, and forwarded by the Bank of Montclair to the Caldwell National Bank for collection.

Q. Will you trace the record of that check upon "Exhibit D 4¾," being the ledger of the Bank of Montclair? A. Showing that there is a deposit to the credit of A. Gould Harrison on Septebmer 19, 1906, of $1,975.00.

Mr. Harrison: I would like to offer my check in evidence.

Mr. Maxson: I have no objection.

Marked "Exhibit H, X 1."

Amos Gould Harrison—By Defendants—Cross

A. GOULD HARRISON recalled.

Cross examination (continued) by Mr. Maxson:

Q. Do you remember having a conversation, Mr. Harrison, with Mr. F. K. Fish about February 1st, 1910, about the profits of the business? A. I cannot remember that—about the dates of it.

Q. Do you remember the conversation? A. I do not.

Q. Did you ever have any conversation about that time with Mr. Fish as to whether or not the business was making any money? A. I have had a number of conversations with him, but I cannot recall the exact time.

Q. Early in the year 1910, did you have such conversation? A. I would not say what time it was; it was a number of times.

Q. What was said about it? A. The whole business situation was talked over.

Q. What did you say to him with respect as to whether or not the business was making a profit? A. I don't know—the books show whether the business was making a profit or not.

Q. (Question read). A. I don't understand what you mean.

Q. I understood you to say you did have a conversation with Mr. F. K. Fish as to whether or not the business showed a profit? A. I have had conversations with him about the business showing profits or losses.

Q. Did you have such a conversation in 1910, early in the year? A. Probably I did.

Q. What did you say to him on that occasion, whenever it was? A. I don't understand the question.

Q. What did you say to him about the profits of the business? A. I shall have to answer that with

an explanation; the question would come by looking over the statements of the profits we had; we generally took off statements every six months——

Q. Did you tell him about that time, that the company had lost money? A. Whatever the statement shows—whatever the books show.

Q. Did you tell him that? A. I don't know whether I did or not.

Q. Then, you don't recall whether you told him that or not? A. I can tell if I see the statement; if you will show me the statement, I will tell you what I said to him.

Q. You don't recall from your recollection today, whether you told Mr. Fish around February, 1910, whether or not you told him that the company had lost business? A. If you will show me the statement, I can tell you.

Q. You do not recall today whether you told him in February, 1910, that the company had lost money? A. I say, I could not tell, unless I saw the statement; if you will show me the statement, I can tell you—during that time.

By the Court:

Q. You do not recall? A. No, sir.

Further cross:

Q. Now, you recall depositing the Dey check in the bank—the check that has been the subject of some discussion in the case? A. I remember it was deposited, yes.

Q. Did you draw out the money for the check? A. I gave it to the firm; the check was given to the firm, and deposited in their bank account.

Q. Didn't you draw out the cash for it? A. I think it was a check that Mr. Fish signed, and myself; I won't say positively.

Q. You do remember most of the other details about it? A. What details?

Q. In relation to the Dey check; you remember all about the slip on which it was entered? A. Yes, sir.

Q. All about how it was put in the drawer? A. It must have been put in the drawer.

Q. And all about the transaction, except whether you drew out the cash for the check? A. There was a check drawn against that credit slip.

Q. Then, you did not draw out the cash? A. My recollection is, that I drew a check, but I am not positive unless I look at the records.

Q. You won't say that you did not draw the cash out for that check? A. Mr. Maxson, I said once before, that possibly I drew a check—possibly I might have drawn the cash; the records will show that, and my memory won't tell me.

Q. Do you remember today whether you drew out the cash or not; you know whether you remember or not?

Mr. Harrison: He has said twice that he does not remember.

Q. But don't you remember today whether you drew out the cash for that Dey check? A. I do not recall.

Q. Now, did you draw out the cash for other checks on different occasions? A. What checks have you relation to?

Q. I mean any checks—I mean, did you go to the Harrison Milling Company accounts and cash checks on occasions? What particular checks have you reference to?

By the Court:

Q. Any check—— A. I have cashed pay-roll checks.

Further cross:

Q. Did you, on occasions, cash your own checks at the Harrison Milling Company bank? A. Yes, sir.

Mr. Harrison: "Did you cash your own checks at the Harrison Milling Company bank?" Now, in the first place, the Harrison Milling Company may, and as a fact, did check accounts at more than one bank.

Mr. Maxson: That is not part of the record in this case.

Mr. Harrison: The banks may or may not have been changed at times. I fail to see where that question has sufficient definiteness for a proper answer; and in the second place, I fail to see where there is any materiality in the cashing by this witness of his individual check at this bank—that bank or some other bank.

The Court: I do not see why it is material; I will allow it to stand and deal with it on the final disposition of the case.

Q. When you deposited your check for $2,000 to the credit of the Harrison Milling Company at the bank, was the company's credit good with the Montclair Bank?

Mr. Harrison: I object to that question, if the Court please; that is not a matter within this witness's knowledge; that is a matter of the Board of Directors or of the officers of the bank.

Mr. Maxson: I will withdraw the question.

Q. At the time when you deposited your check for $2,000 with the Montclair Bank, were you getting credit there on commercial paper? A. Yes, sir.

Q. To what extent? A. I cannot remember.

Q. Well, approximately? A. $1,000 or so.

Q. Do you remember having some conversation with Mr. Nasmyth when he was making examination of the books? A. Yes, sir.

Q. Did he ever ask you to explain the entry in the book, 15 shares of stock to A. G. H., ticket on loan? A. No, sir.

Q. He never asked you to explain that? A. No, sir.

Q. Have you ever discussed it with him at any time? A. Not that particular entry.

Q. You said, Mr. Harrison, on cross examination on the 19th day of March, 1913, in answer to this question: "Ques.: Was it left to the bookkeeper? Ans.: It would depend on the condition of the loan —if we had borrowed $1,000 from a friend of mine, we would not run it through the books; we did not destroy all the slips the first year." Now, will you state some of the transactions when you borrowed money from a friend of yours, and did not put it in the books? A. Well, I have borrowed money from H. C. Dabney, and did not run it through the books; also borrowed money from J. W. Van Gieson, and did not run it through the books; and borrowed money from my wife, and did not run it through the books; that is a few of them.

Q. Let us have all that you can remember. A. I cannot remember unless I rack my brain with it; Mr. Fish made a loan also, that was not run through the books.

Q. What was your custom with respect to de-

stroying these slips in the drawer? A. I don't understand the question.

Q. What was your custom with respect to destroying these slips in the cash drawer? A. After they were entered on the cash books.

Q. How soon afterwards? A. Probably five minutes or six minutes after they were entered—maybe one minute.

Q. How frequently was it your custom to have them entered? A. Probably once a year, sometimes more and sometimes less.

Q. Then you had no uniform custom about it? A No, sir.

Q. Now, when were your overdrafts entered in the book with respect to the time when they were made? A. Before the end of the year, in accord with the resolutions; sometimes before, and sometimes afterwards; I should have to refresh my memory.

Q. Did you enter them in the book?

Mr. Harrison: I object to this question on the ground that the testimony shows that Mr. Tichenor and Mr. Dabney entered these in the books. I was not going to object; now, he says, "When did you enter them in the books?" He misconstrues the testimony——

The Court: Does the testimony show that?

Mr. Maxson: I had no intention in the world of deceiving this witness; I said, "When did you, as the treasurer of the company, have these transactions taken care of?"

Q. Did you enter them in the books? A. To my recollection, I did not; I have made some entries, but it was the bookkeeper's business.

Q. Were they entered under your direction? A.

They were at times; I do not tell the bookkeeper everything.

Q. Then, sometimes he enters them without your directions, and sometimes by your directions? A. Presumably so; he does things without my directions; he tries to keep up the same plan.

Q. Then, it was done on a certain plan, was it? A. Yes, sir.

Q. And was it done generally under your direction, or did you make this plan on which the entries were made, or did the bookkeeper make it? A. The method of our books was started by Mr. Coleman; I am not an expert bookkeeper.

Q. Under whose direction did he make his entries? A. He had his own way of keeping them.

Q. He kept them as he pleased? A. Not exactly as he pleased.

Q. Well, how did he keep them—according to his own method, or under your direction, or under somebody else's direction? A. Both ways.

Q. Then he had no method? A. We had a method; if I wanted a little change, he would do it.

Q. Now, regarding the entry of these overdrafts, did he do that under your direction? A. I presume I would tell him to make the entry.

Q. Did you or didn't you? A. I say that I presume I told him to make the entries.

Q. Don't you know whether you did or not? A. I have told him at times, yes, sir.

Q. As to the plan of making the entries, with respect to the time that they were made, and the time the slips were withdrawn, did you direct Mr. Coleman how to make them? A. I told him to credit them up, and he did it in his own way.

Q. With respect to the time?

Mr. Harrison: I object to the question, because it is comprehended within previous questions.

The Court: The objection is overruled.

A. If you will show me the books, I will tell you what was entered.

Q. Do you know to-day whether Mr. Coleman made these entries without any direction from you, or whether you directed him how to make them? A. Show me the book, and I will tell you.

The Court: That is not responsive.

A. He has made some of them with my directions, and some of them with his own.

Q. Then, he had no uniform method of doing it —is that the idea?

Mr. Harrison: That is objected to.

The Court: I don't think that the witness understands that question; are you dealing with the question as to whether sometimes he entered them of his own accord, or whether he entered them by direction of Mr. Harrison?

Mr. Maxson: Your Honor will remember, that I asked the witness with respect to the time when the entries were made, as to when these slips were destroyed, and when they were made, and he said sometimes during the year and sometimes at the end of the year, and I have been trying to elicit from the witness whether there was a method in doing it.

Q. Was there a method? A. Mr. Coleman had a method.

Q. And what did he do, what was his method? A. As regards what slips?

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Q. To entries of this character—in the books—what was his method? I am talking about the slips. A. His method at times was to try, once a year, at the end of the fiscal year, to get rid of what slips we could, or what slips should be charged up—making entries to the different accounts that they belonged to.

Further cross:

Q. I am referring more especially to your account and your overdrafts or withdrawals, as you call them. Did Mr. Coleman enter up your withdrawals at the end of each year? A. Show me the books, and I will tell you whether he did it or somebody else.

Q. Did he have a method of doing it at the time when they were entered, or was it done under your direction? A. I have answered that before; I said, sometimes under my direction, and sometimes by himself.

Q. Then, there was no method about doing it? A. There must have been a method.

Q. Then, when you say that the subsequent bookkeepers followed the same plan, you are in error, are you not? A. There were no subsequent bookkeepers.

Q. Was not Mr. Tichenor a bookkeeper subsequent to Mr. Coleman? A. That is right, yes, sir.

Q. I understood you to testify that Mr. Tichenor followed the same plan; now, what was the plan? A. I mean the general plan of keeping the books.

Q. What was the plan with respect to the time when these overdrafts were entered from the slips in the drawer? A. Mr. Tichenor was a little more particular about looking after the slips at the end of the year, than Mr. Coleman was.

Q. I want to get what the plan was of doing it? A. Mr. Tichenor knows the plan.

Q. Then you don't know? A. I know some of them, not everything.

Q. Tell us what you know about it.

Mr. Harrison: I object to that, that is too general a question.

Q. When, with respect to the time when these different resolutions were passed, or are alleged to be passed by the minute book, were these entries made in your account?

Mr. Harrison: I think that that should probably be preceded by a question ascertaining the witness' knowledge. He did not keep the books.

A. Show me the books and I will tell you; I don't know whether they were entered at that time.

Q. Were they entered before the resolutions were passed?

Mr. Harrison: Objected to.

By the Court:

Q. Were they entered before the resolutions were passed? A. No, sir.

Further cross:

Q. They never were entered before the resolutions were passed—are you sure about that? A. I answered the question.

By the Court:

Q. Are you sure of that? A. I don't understand the question.

Q. The question is: you stated that they were not entered; you stated they were not entered in the

books before the resolution was passed. A. What has he reference to?

Q. Any resolution about charges to your account, as I understand—withdrawals or overdrafts—were they entered before the resolution was passed? You said they are not; are you sure of it? A. I am not positive; it is so long ago; I cannot remember them positively.

Further cross:

Q. Before any of these resolutions were passed, what did you do, if anything, with respect to examining your personal account?

Mr. Harrison: I object to that question, on the ground of its indefiniteness; considerable testimony has been given relating to several overcharges; now it seems to me, that his question should be directed to one or more of these specific withdrawals and credits. I object also on the ground that it is repetition and has been completely covered in the previous examination. The Court will recall that all of these various resolutions were gone over in detail.

The Court: This is a question which presents a new phase to my mind. I will allow it to be answered.

By the Court:

Q. What did you do about your personal account before these resolutions were passed; did you make an examination? A. My personal account? I would have a slip or a memorandum of it in my pass-book at the time of the meeting, and the amount of drawings, both on slips and what the pass-book represented. Before the meeting, or at the meeting, the total of my account, including the ledger

account and the cash slips, were either produced at the meeting, either on a slip of paper, or else by my pass-book,—a little memorandum book, we will say.

Further cross:

Q. Then, you took the figures from your pass-book? A. I thought I was competent to figure a column of figures.

Q. Then, you just took your own figures, and passed a resolution crossing off the overdrafts; is that the idea? A. They were copies of the ledger account.

Q. What do you mean by your pass-book,—the small book which you say you carried in your pocket? A. Yes, sir.

Q. Then, after you had done that, after you had crossed these overdrafts off by a resolution under the circumstances you have just related, what did you do about making the entries in the books of the Harrison Milling Company? A. I think I explained that before.

Q. Did you go to the bookkeeper and tell him to credit your account with the amount stated in the resolution? A. I presume I did at times.

Q. Did you hand him the minute book, or did you take the amount to him? A. I handed him the minute book, if I did not give him a slip of it.

Q. Then, the amount was credited to your account on which one of the books of the Harrison Milling Company? A. Whatever the entries show, they were credited to.

Q. You don't know how it was credited on the books? A. The books show it.

Q. You never made an examination to find out how it was done? A. I have looked over his entries lots of times.

Q. Then you know how it was done?

Mr. Harrison: Objected to.

A. I know how some of it was done, yes, sir.

Mr. Harrison: I object to it on this ground: first, it is immaterial; second, this witness is not the bookkeeper; he merely had the supervisory direction of the books; and third, that the witness is entitled to examine the books for the purpose of explaining these details.

By the Court:

Q. How was it entered; how were these accounts entered on the books—your personal account? A. I know there are entries in the cash-book and in the journal, and if I can refresh my memory by looking at them, I can tell you.

Further cross:

Q. You do not recall then, to-day, how they were entered? A. By refreshing my memory from the books, I can tell you, but I cannot tell you from memory; they would all virtually go back to the merchandise account; sometimes the bookkeeper would make an entry either in the cash book or sales book—charging these items to salary, sometimes merchandise, as the case might be.

Q. Then, there was no uniform way of making these entries with respect to the account in which they were charged off in the books of the Harrison Milling Company? A. I don't understand the question.

Q. They were entered in two or three different accounts? A. I just answered that they were.

Q. And did the bookkeeper do that of his own volition, or did you instruct him which one of

these accounts to enter these items in? A. He probably did it by his own direction; it was always my understanding with him that these things should go to salary; I told him, "They go to salary."

Q. Did you instruct Mr. Tichenor about that? A. Yes, sir.

Q. Then, if he entered them in any other account, it was contrary to your direction?

Mr. Harrison: Objected to; that is a conclusion.

The Court: That is not a conclusion.

A. Yes, sir.

Q. When did you show Mr. Fish the overdrafts in the book which you say were crossed off by the minutes of September 2nd, 1907? A. Well, some of the minutes were antedated, so as to suit Mr. Fish's convenience when he was on his vacation in the country.

Q. You recall that he was on his vacation during that summer? A. He has gone on vacations.

Q. Your memory goes back to all the details about that entry before it was crossed off, doesn't it? A. Not all the details; I remember some things about it.

Q. Haven't you testified to all the facts about how you showed Mr. Fish the slips, and he said it was all right for you to overdraw that way? A. Yes, sir.

Q. Cannot you recall when that conversation took place?

Mr. Harrison: That is objected to on the ground that this is mere repetition.

The Court: The objection is overruled. Answer the question.

A. I have answered his question before.

The Court: Answer it again, if you can.

Q. (Question read). A. That resolution and other resolutions were antedated so that I cannot say positively what time the conversation took place, because the minutes were all dated way back. I cannot remember.

Q. What determined as to whether they should be ante or post dated; whether they should be dated ahead or afterwards? A. At Mr. Fish's suggestion, I would antedate them.

Q. At whose suggestion did you post-date them—date them before? A. At his suggestion.

Q. At his suggestion? A. Yes, sir.

Q. Is that true of all the minutes in the book entered after Mr. Fish came into the company? A. I won't say whether it is or not.

Q. You do remember the fact? A. I remember they were antedated at Mr. Fish's suggestion.

Q. Now, when he made these suggestions, what did he say about antedating the minutes? A. As I have explained before, Mr. Fish would say that he would be unable at times to leave, and we would have our meetings later in the fall when he could get there; and he wanted the minutes antedated to conform with the corporation laws.

Q. And when was your annual meeting? A. It should be in July.

Q. And was that the only reason he ever gave for changing the actual date of the meeting? A. I don't remember any other.

Q. Now, with respect to this certain minute of September 2nd, 1907, how long previous to the passing of this resolution did you show Mr. Fish these overdrafts? A. I won't say.

Q. How long after the resolution was passed was it, before you directed the bookkeeper to make the entry in your account? A. I cannot say.

Q. Do you remember anything about it—outside of the fact that you talked it over with Mr. Fish, and he told you it was all right for you to overdraw? A. Yes, sir.

Q. What else do you remember about it? A. After the meeting, as I have explained heretofore, afterwards the book, or a slip was given to the bookkeeper to make the entry after the meeting.

Q. And that it was invariably done? A. I did not say it was invariably done.

Q. Was it sometimes done before the meeting? A. How could it be?

Q. It never was done before the meeting, was it? A. We could not make any entries until after the resolutions were passed.

Q. You say they never were entered in the books before the resolutions were passed? A. I don't see how they could be; we have had meetings when the resolutions and minutes were not put in the book for some reason or other.

Q. Now, did you ever have any overdrafts on the books which were not crossed off in the minutes? A. I cannot tell; look at the records.

Q. How frequently did you examine your personal account to find out how much you were overdrawing?

Mr. Harrison: I would like to make another objection here, on the ground that his is mere repetition—if your Honor will look at page 69 of the third day (reading).

Mr. Maxson: Point out on page 69 where that question is asked, or anything relating to it.

A. I would go over it at times—sometimes in the evening with Mr. Fish, and other times in the daytime, and sometimes by myself, and sometimes with the bookkeeper.

Q. You would usually go over it with Mr. Fish? A. I have gone over it with Mr. Fish.

Q. How frequently? A. A number of times.

Q. On what occasions? A. On his visits to the office.

Q. During what years? A. Since he came in until he went to New York a while ago.

Q. State one specific occasion where you went over your overdrafts with Mr. Fish. A. At one of the meetings when he was there.

Q. Which one? A. I cannot say which one, but I know from memory, that before the meeting or after the meeting, he would go over it with me; he has gone over the trial balance with me; he has gone over all the accounts; he has spent two or three days on the trial balance.

Q. You don't remember any one meeting where you went over your account with Mr. Fish, do you, your personal account? A. I know of a number of meetings when I went over them with him, but I don't know which you want.

Q. State one particular meeting where you went over your account with Mr. Fish. A. I cannot answer that unless I see the resolution; there is one resolution there, drawn by the advice of my brother, at Mr. Fish's suggestion that he draw the resolution, and Mr. Fish went over it thoroughly with me.

Q. What was the date of the minute? A. Show me the minute book and I will tell you.

Q. Do you know the year? A. I do not, until I see the book.

Q. But you do recall that Mr. Fish talked to you about it, and that he directed that your brother draw up the minutes and that you show him all the overdrafts therein contained? A. That minute that I had reference to——

Q. You recall each one of these details, don't you? A. I am talking about one resolution of $542.63.

Q. You recall each one of these details, about the resolution which you say Mr. Fish directed your brother to draw up? A. I did not say he directed him to draw it up.

Q. Didn't you say that Mr. Fish wanted your brother to draw it up? A. He said it would be in better form to have my brother draw it up.

Q. Then, with respect to that resolution which Mr. Fish wanted to have your brother draw up, you remember that you talked to Mr. Fish about the overdrafts contained therein, don't you? A. The amount was talked about, yes.

Q. You remember that he asked that your brother draw it up? A. Yes, sir.

Q. Do you remember anything about his asking that it be post-dated or ante-dated? A. I would not say about that.

Q. I am asking you whether you remember or not? A. I won't say.

Q. Now, do you remember the year when all these things happened? A. By refreshing my memory of the minute book, I can remember the year.

Q. Did you, on your direct examination in this suit, have to refresh your recollection with respect to the other details to which I have just called your attention? A. I have refreshed my recollection by counsel showing the books to me.

Q. Then, those facts to which I directed your

attention, which you remember today, you got from refreshing your recollection from this book; is that so?

Mr. Harrison: I object to that on the ground it seems to me he ought to define the facts.

Q. There were three details about one certain resolution which you remember — one was, the amount that was crossed off; another one, that you talked it all over with Mr. Fish and he said, "All right"; the third was, that he asked to have your 20 brother draw it up; that is it, isn't it? A. Yes, sir.

Q. You remember each one of those details? A. Yes, sir.

Q. Now, do you remember today, from having refreshed your recollection from the book, or are they in your memory without respect to the book? A. That's too deep for me.

By the Court:

Q. Are they in your memory? A. I have some recollection of it.

30 *Further cross*:

Q. Now, you cannot recall today the date, even the year, in which that meeting took place? A. No, sir.

Q. Did you attend the meetings of this corporation in 1903? A. Show me the minutes, and I will tell you whether I did or not; if they had a meeting in 1903 I was there.

Q. Then you did attend the meeting? A. If they had a meeting, I was there.

Q. When did you first make up your mind that 40 this was a loan and not a purchase?

Mr. Harrison: Objected to.

(Question withdrawn.)

Q. Have you ever discussed the question as to whether or not this was a loan or purchase with anybody—referring to the stock? A. I have talked it over with other people, yes, sir.

Q. With whom? A. With my brother.

Q. When did you first talk it over with him? A. On the inception of the company.

Q. I am referring now to Mr. Fish's stock transaction? A. I mean at the time he came in—at the time Mr. Fish came into the company.

Q. And at that time did you tell your brother that it was a loan? A. My understanding was that it was.

Mr. Harrison: I object to this line of testimony.

Q. Do you want that answer to stand? A. No, sir; it was at the time Mr. Fish came in—about that time.

Q. You signed some affidavits in this case, didn't you, at one time? A. I probably did.

Q. Did you discuss with your counsel any of the defenses that were set up in the case?

Mr. Harrison: I object.

The Court: What is the object of this inquiry, Mr. Maxson?

Mr. Maxson: That is the difficulty; there is no defense in this case; in fact, there are admissions all through this record that this was a purchase of this stock. Now, after Mr. Fish went on the witness stand and used the word "collateral" here, it has been a loan ever since; it seems to me I am entitled to examine this witness and find out whether it is a loan or a purchase.

The Court: Yes.

Q. In this affidavit, didn't you say that this was a purchase—that Mr. Fish owned the stock?

Mr. Harrison: Objected to on the ground that the affidavits filed in this case are properly part of the record of the case, and his attention should be called to the statements in the affidavits.

Mr. Maxson: The question is withdrawn.

The Witness: I do not recall ever looking at my affidavit.

Q. If you did so state, was it, or wasn't it true, as you recall today?

Mr. Harrison: Objected to on the ground that it is a hypothetical question.

By the Court:

Q. Was your statement at that time correct? A. I want it to be correct.

Further cross:

Q. From the time this suit was started, down to the time that Mr. Fish went on the witness stand and used the word "collateral," was anything ever said in your presence about this being a loan of this stock? A. My understand was, when he came in, that that was the understanding, that it was a loan of stock.

Q. Did you know before the answer was filed in this suit, what defenses were going to be set up? A. I don't understand the question.

Q. Did you know what was going to be said in reply to this suit against you? A. I could not state what was going to be said, no, sir.

Q. Didn't you discuss it with anybody; didn't you tell your side of the story? A. By advice of counsel, that is all.

Q. Did you ever tell anybody that this was a loan that Mr. Fish had made you on this stock, and not a purchase? A. I probably have, and probably not; my memory don't serve me that much; I talked it over with my brother and my wife.

Q. You told them it was a loan? A. Yes, sir.

Q. Did you attend the meeting at Montclair of June 18, 1903? A. I probably did.

Q. Is that the minute of the meeting that I now show you in the minute book? A. It probably is.

Q. Did you attend the meeting of the directors on the same day, immediately after a meeting of the stockholders? A. I probably did.

Q. And did you vote for the resolution, the second resolution, which reads as follows: "Resolved, that the Board of Directors do hereby direct the issue of 40 shares of stock of the Harrison Milling Company, said stock to be sold at par, and the proceeds thereof paid into the treasury of the company; and the President and Treasurer are hereby directed to execute and deliver certificates to the amount of 40 shares; motion carried." A. I was probably there that time.

Q. Were you a director of the company at that time? A. Yes, sir.

Q. Does the Harrison Milling Company keep a stock book? A. Yes, sir.

Q. Has it been produced on this trial? A. I don't know whether it has or not; it is here among the records.

Q. Now, do you know how that stock book is kept? A. I have seen it; it will speak for itself.

Q. Who keeps the stock book? A. It is kept in the safe.

Q. Who keeps it? A. And the records have been made sometimes by myself and sometimes by the bookkeeper.

Q. How frequently do you book stock? A. What do you mean—what kind of stock?

The Court: I think now, that unless you are going off on another subject, you may confuse the——

Q. Do you keep an inventory account? A. Yes, sir, we keep records of all our transactions.

Q. And who keeps that account? A. The bookkeeper.

Q. Does Mr. Tichenor keep it now? A. Yes, sir.

Q. How often do you take the stock of the company? A. About every six months.

Q. About every six months? A. Yes, sir.

Q. Have you been taking it every six months since Mr. Tichenor came in as bookkeeper? A. Not every six months—about every six months.

Q. And what book is that kept in? A. I shall have to go into lots of details; our inventory of stock on hand, merchandise of any kind, is kept in the book in the safe.

Q. Called what book? A. The inventory book.

Q. And is that here? A. No, sir.

Q. Do you say that Mr. Tichenor did keep it entirely? A. You have got me confused; the inventory I have copied off myself; Mr. Tichenor copied it, and sometimes the typewriter.

Q. You value the stock for the purpose of making up that inventory? A. The bookkeeper and the foreman and myself generally do.

Q. Who values the stock? A. We take the inventory and find out what we have got, and we take the market on that day, and we put it down; we see what the market is.

Q. Now, whatever the market price is of the stock on the date of the inventory, do you take an

average price? A. We take some figures of some concern that is reputable, and figure it up that way.

Recess to 2 P. M.

After Recess.

A. GOULD HARRISON resumes the witness stand.

Cross examination (continued) by Mr. Maxson:

Q. Do you remember, Mr. Harrison, the occasion when Mr. Fish was out to the mill in 1909, in September? A. I don't understand the question.

Q. Do you remember the young lady who testified about Mr. Fish having a conversation with Mr. Tichenor about the book in September, 1909? A. I don't know whether it was in September or not.

Q. Do you remember the occasion when he was there? A. Yes, sir.

Q. Were you in the office at the mill when he had this conversation with Mr. Tichenor? A. I think possibly I was.

Q. Do you remember whether you were or not? A. I think I was there.

Q. Did you hear him tell Mr. Tichenor that the account was all right? A. I have heard him tell him that.

Q. Did you, on this same occasion, hear him tell him that? A. I think I did.

Q. You did hear him tell it? A. I say that I think I did.

Q. And did you tell him any of the other conversations that took place at that time? A. I probably did.

Q. Can you relate any of the other conversations? A. Well, it was, as far as recollections go, it was appertaining to the business and profits and

losses and sales and market values, and different accounts.

Q. What specifically did he say; do you remember?

(Question withdrawn.)

Q. Can you relate any other of the conversations that took place on that occasion, except that part of it where Mr. Fish said that your account was all right? A. The only way I can answer that is, the same as I have answered previously; that we 20 spoke of business conditions regarding the whole business.

Q. What did you say about it? A. It seemed to be that our business dealings were satisfactory; there were no objections at all, that I can remember.

Q. Do you refer now to the business dealings between you and Mr. Fish, or the dealings of your company with its customers? A. You asked about Mr. Fish—at the time he was there.

Q. They were very satisfactory at that time? A. Yes, sir.

30 Q. Was not that after September, 1909, that that happened? A. I say I am not positive as to the date.

Q. Haven't you testified something about the date with respect to the entry of these minutes? A. What did I testify?

Q. Your attention was called to this minute of September 8, 1908, wasn't it; also to the minute of September 30, 1909; I show you these two minutes on page 30 of the minute book? A. I remember those meetings.

Q. And was the conversation that you have just 40 related as having had with Mr. Fish, was that before the meeting of September 30, 1909, or afterwards? A. It must have been before.

Q. Before that? A. Yes, sir.

Q. Now, you are sure about that? A. I feel so.

Q. Now, you testified that Mr. Fish was away in the country from time to time; was he away that summer? A. I don't know whether he was or not; I know he was away at times.

Q. You are quite sure he was there during the month of September, 1909? A. I did not say I was sure of it.

Q. You are not sure now whether he was or not?

Mr. Harrison: He answered it that he was not sure.

A. I have no way of telling absolutely whether he was there or not; I cannot go by the minutes, because they were not accurate as to their date.

Q. Do you recall, from your own recollection, whether he was there during the month of September at all? A. I cannot.

Q. Do you know whether he was there during the month of October? A. He was there in the fall, I know.

Q. It may not have been until November that these conversations took place? A. That is so; I say the conversations took place when he was there.

Q. It could not have been as late as December, though? A. I say I cannot tell what month it was.

Q. Then it may have been as late as the month of December, 1909? A. I have no way of telling.

Q. That you discussed these facts which appear in this minute, you understand; could it have been as late as December, 1909? A. I don't know.

Q. But it might have been, as far as your recollection goes? A. I cannot answer you any better.

Q. You know what your recollection is to-day—as far as your recollection goes, it may have been as late as the month of December, 1909.? A. It

may have been September, October or November, and possibly it may have been later; I cannot say; I have no way of telling.

Q. Now, when did you say that your agreement with Mr. Fish to draw $3,000 a year salary was made? A. Show me the minute book and I can tell you when it was.

Q. Does the minute correctly show when the agreement was made? A. It was talked over long before, and the resolution was put down; we talked it over.

Q. Was it dated after? A. I don't know whether it was after or before, but the minute was inserted after, I think, the talk; I am pretty sure it was after the talk.

Mr. Harrison: I object; this has all been gone into in detail.

Q. I believe you testified before, on cross examination, that that agreement terminated your right to draw the amount of money you pleased out of the treasury?

Mr. Harrison: I object; on a question of that character, it seems to me that the witness's attention may be drawn to the specific testimony which he gave.

The Court: Are you able to do it readily?

Mr. Harrison: I can call his attention to it.

See Book 4 of testimony, page 77 and page 78 (reading).

Mr. Maxson: I will withdraw the question.

Q. Do you recall any conversation between you and Mr. Fish with respect to your raise of salary at the time when that resolution was passed that we discussed before recess?

The Court: That has been gone into, hasn't it?

Q. Do you recall before recess, on cross examination, that your attention was directed to a minute that you said was drawn up at Mr. Fish's suggestion by your brother, which crossed off certain overdrafts of yours; do you remember that resolution? A. Yes, sir.

Q. Do you remember that resolutio also increased your salary? A. If I can see the resolution; I think it does do something about it.

Q. Did you have any conversation with Mr. Fish about the increase of salary, before the resolution was passed? A. I suppose we did; it would be customary to talk about it.

Q. Cannot you answer that question as to whether you did or not? A. I feel positive that we did talk about it.

Q. State what was said. A. I cannot tell you word for word what was said.

Q. Give us the substance, as nearly as you can, of what was said? A. He and I agreed——

Q. Let us have what Mr. Fish said with respect to the inquiries; how did you open up the subject of inquiry; what did you say to him; state, in substance. A. If my recollection serves me right, the salary, at that time, the allowance was $20 a week with the same agreement that had been in force before.

Q. What was that? A. The increase should be made to $40 a week, according to that resolution, with the same agreement as before—the same consideration.

Q. What was the same consideration before? A. That reasonable allowance would be made at the end of the year.

Q. And you would be permitted to draw as you pleased, from the treasury of the company? A. They were always approved of at the end of the year.

Q. Approved by whom at the end of the year? A. The directors.

Q. Now, did you discuss the resolution of September 8, 1908, with Mr. Fish, before it was entered? A. I cannot say whether I did or not; we had the meeting—made the records on billheads or letter paper, and sometimes they were entered at the meeting, but most always afterwards.

Q. You don't remember whether you discussed that with him or not? A. May I have the resolution read?

Q. In the minute book on page 30 (showing minute book to the witness). A. I don't remember of any meeting that is in this book, or that has been neglected to be put in, which was not talked over with Mr. Fish, that is, the purport of the resolution.

Q. Then you want to say that all the minutes in this book, after Mr. Fish came in to be a participant in the affairs of the company, were discussed with Mr. Fish before they were entered in this minute book? A. I don't understand the question.

Q. Did you talk over with Mr. Fish the subject matter of all of these minutes before they were put in the book? A. The minutes are records of the meetings, and they were talked of, certainly, at the meetings.

Q. Did you talk over with Mr. Fish all the transactions recorded in the minute book? A. I have talked them over with him, yes, sir.

Q. And that is, with reference to every one of the minutes that were entered from 1903 down to the present time, in this minute book? A. The way

I can answer that is, that at the directors' meetings those matters came up.

Q. Did you talk over the minutes that were entered in the book, the minutes of 1910? A. What minutes were they—let me see them; I did not talk over any of these minutes with him before the meeting.

Q. Do you recall the talk over all the others? A. Yes, sir.

Q. Then you talked over this certain meeting to which I have called your attention, September 8, 1908, didn't you? A. Yes, sir.

Q. Where did you talk that over with him? A. Wherever we were.

Q. Where were you? A. I don't know where we were.

Q. You do remember you talked to him about it? A. Yes, sir.

Q. Cannot you remember what the conversation was about? A. As I explained it before, it was in relation to the business entirely—the condition of the business, and the way it was carried on.

Q. You are positive you did talk to him? A. I feel positive that I did.

Q. Did you tell him how much the overdrafts were? A. Yes, sir.

Q. How much did you tell him they were—who put the minute in the minute book? A. I did.

Q. In your own handwriting? A. Yes, sir.

Q. How soon did you put it in after you talked it over with Mr. Fish? A. I don't know.

Q. Cannot you tell approximately? A. No, sir.

Q. Did you show him the books containing the overdrafts or the slips? A. Yes, sir.

Q. Where were the overdrafts shown? A. In the ledger account, and the slips——

Q. Then that item which does not appear here which is crossed off by this minute of September 8, 1908, includes both slips in the drawer and charges in the cash book? A. No, sir, I said charges in the ledger account and slips in the drawer.

Q. Where did you direct Mr. Fish's attention to these things; at the mill or at your house? A. At the mill.

Q. Who were present besides you and Mr. Fish? A. I won't say.

Q. But you do remember that you called his attention to it? A. The bookkeeper and Mr. Fish and myself were there.

Q. Who was the bookkeeper? A. Mr. Tichenor was there in 1908.

Q. Did he hear the conversation between you and Mr. Fish? A. I would not say whether he did or not.

Q. Was he near enough to hear it? A. I cannot tell you whether he heard it or not; you will have to ask him that.

Q. Where was he with respect to you and Mr. Fish at the time the conversation was going on? A. Probably in the office.

Q. Do you know where he was? A. Why, he was in the office some of the time.

Q. Where was he in the office? A. Either standing or sitting down, I don't know which.

Q. Now, did Mr. Fish express himself about the subject matter of that minute? A. What minute?

Q. The same one, September 8, 1908? A. Yes, sir, he expressed himself about it at the meeting.

Q. What did he say about it? A. He said it was satisfactory to him, and he voted on it.

Q. Now, how do you explain the fact that these minutes are entered up at different periods, when

you have testified, as I recall it, that your overcharges were to be crossed off at the end of the year by arrangement with Mr. Fish? A. That is probably the custom of the bookkeepers, according to the agreement we have had ever since we have been in business.

Q. How many statments of the financial condition of the company did you send to Mr. Fish before he paid the final two thousand dollars on account of that stock? A. I won't say how many.

Q. Do you know? A. There were a number of 20 statements sent him.

Q. Who prepared them? A. The bookkeeper prepared them; if he asked for a statement and we only had one, I would get it off.

Q. How long previous to Mr. Fish's coming into the company did you stop keeping the books? A. I never kept them.

Q. You never acted as bookkeeper? A. In the absence of the bookkeeper for an hour or two, maybe.

Q. You are not entirely an amateur bookkeeper? A. I feel that I am an amateur; I never actually 30 kept books to close them up.

Q. To whom was this $4,000 worth of stock issued by the Harrison Milling Company when it was originally issued? A. F. K. Fish.

Q. And you issued the stock to him when he was making the company a loan of $4,000? A. Yes, sir.

Q. Did you take any advice about that as to whether that was the proper thing to do, or did you do that of your own volition? A. Well, at the time, as I made a statement this morning, I thought it was my brother that I talked with at the time Mr. Fish came in, but I was entirely wrong about that, 40 and think it over, I remember it was a man named Trimble, James M. Trimble, who is now dead; he

gave me advice on these things; my brother was not there at the time; I had thought it was he, but it was Mr. Trimble, Mr. Trimble and Mr. Dabney, Trimble and Dabney.

Q. Did you think about that at the time this suit was started? A. I don't know whether I thought about it or not.

Q. On any of the statements which you made up and sent to Mr. Fish previous to the time he paid the balance of this money, were your overdrafts shown? A. They were included in the statement.

Q. Were they specifically shown? A. No, sir.

Q. In what certain items of the statement were they contained; can you tell from the statement which you drew up yourself? A. I never took off a statement; I copied that from the original statement that was then on file.

Q. Will you explain why, if, as you have stated, that Mr. Fish was only making a loan to the company, that you went into the question of overdrafts of your own with the company, with him? A. The only way I can answer that is, at the time he took this stock, my knowledge of corporations was so poor; I explained fully the condition of the business, and of the arrangement I had had with Mr. Mullen, and I wanted to have a reasonable amount of the profits. I told him it was always considered that Mr. Mullen financed this business for me; and Mr. Fish was willing to take the chance on this investment.

Q. Is that why you discussed the overdrafts with him? A. Yes, sir.

Q. And asked his consent that you might continue? A. Yes, sir.

Q. During what period? A. No period was set.

Q. Now, during the year 1909 did the Harrison Milling Company raise $4,000; did they have credit

with the bank for $4,000—could you have procured on negotiable paper of the Harrison Milling Company $4,000 from the bank? A. That is something I cannot answer about; we have procured amounts, as the books will show.

Q. The Harrison Milling Company was worth $1,000 over and above its obligations? A. Yes, sir.

Q. Did not your statement made at that time show that the company had a surplus of $30,000 or $40,000? A. Whatever the statement shows.

Q. In assets above its liabilities? A. I don't know until I see the statement at that time; I don't know what year you are referring to.

Q. The year 1909. A. If you will show me the early statement I will tell you what it shows, but I cannot from memory tell you what the amount was.

Q. Can you come within $10,000? A. I won't try, because I won't be positive about it; if I see the statement——

Q. When these differences arose with Mr. Fish, why didn't you call this loan and repay him the $4,000 instead of going to all this litigation and trouble? A. I don't know anything about that.

Q. You never thought about doing that, did you? A. I cannot tell; we had some conferences with his lawyers and my counsel; I left it all up to them; they had charge of it.

Q. Will you explain why, if this was a loan, if Mr. Fish made a loan to the company of $4,000 that you discussed taking an option on the stock for $25,000, that you have testified about? A. I cannot tell what the idea was; I did not suggest it; it may have been a suggestion of my counsel or Mr. Fish.

Q. Didn't you testify on cross examination that you were uncertain whether you made the sugges-

tion to take the option of $25,000, or whether Mr. Fish made it to you? A. If I did say that—I feel uncertain yet that I made it.

Q. You would be certain if you made it yourself, wouldn't you, knowing that this was a loan? A. I would not say positively; there was so much talking amongst all of them; I could not say; I don't think I made the suggestion.

Q. Now, can you state one occasion on which you saw Mr. Fish examining the minute book from the time he came into the company in 1903 to the present? A. He has examined it many times; he had it home with him all one night.

Q. Can you state one occasion and give the date? A. Yes, sir.

Q. When? A. One time he took it home; I don't know the date.

By the Court:

Q. What month, what year? A. I think it was in 1909 or 1910; I would not say positively; I cannot remember those dates.

Q. Was it in one of those dates, 1909 or 1910? A. I am not positive of that.

Q. You said in your direct examination on page 87 of the record, third day's testimony, that you had seen him on numerous occasions examining the minutes. "A. So I have. Q. Did you ever talk to him about the minutes? A. Yes. Q. Did he talk to you at times other than at times when he came there for the purpose of attending a meeting, about the minutes? A. Yes, sir." Now, can you state any other occasion when he examined the books and talked to you about them? A. He examined the minutes numerous times in the office with me.

Q. Will you select one of these numerous occasions and give us the month or the day? A. I would not be as positive as that, no, sir.

Q. Now, you testified before recess that you did not discuss with Mr. Nasmyth that entry in the book, "15 shares of stock to A. G. H., ticket of loan?" A. I said I did not think I discussed the day book entry with him; I discussed the check entry.

Q. How was that— A. The only thing I remember was, that Mr. Nasmyth asked me about the transaction and I showed him the stub of my check book and told him I would produce the check, and he said it was not necessary; that is all I remember about that; it might possibly be that he may have; I don't think so.

Q. Was there any other entry on the books of the Harrison Milling Company which could have directed Mr. Nasmyth's attention to your personal check book with that $2,000 in it? A. Possibly.

Q. Was not that the only entry on the books of the Harrison Milling Company, that in any way related to the transaction? A. I don't know.

Q. Now, you don't want to be positive now, that it was not that certain entry that attracted your attention to your own check book? A. I said this morning that I remember paricularly of directing his attention to my check book, but not of the entry of the cash book.

Q. Now, who made that entry of the cash book? A. Show me the entry and I will tell you.

Q. I show you this book. A. That is Coleman's writing.

Q. Where did he get the facts from, from which he made this entry? A. He must have got them from me.

Q. Do you recall—did he ask you how the entry should be made? A. No, sir.

Q. Did you tell him all the circumstances about the loan to the company? A. He knew about it.

Q. Did you, at the time when he made that entry, tell him all the circumstances? A. Mr. Coleman knew all about it; he was the bookkeeper in the office, and he knew about the loan and he knew about the transaction.

Q. Did he make any explanation to you as to why he did not give you credit in the books of the company for the loan of $2,000? A. He did not.

Q. Did you ever say anything to him about there being no record of the balance between the $1,500 charge there and the loan, which you say was $2,000 —appearing in any place on the books? A. The credit was put on a slip, and he took the entries from the slip, and left the balance of the credit on another slip.

Q. I am referring now to the difference between $1,500, which appears there on the cash book, and what you say was a loan—$2,000—what became of the other $500? A. A slip was left—the balance of it, for awhile.

Q. Was that repaid to you? A. Yes, sir.

Q. $500 was repaid to you? A. Whatever the balance due me was, it was paid to me.

Q. But no part of the $1,500 was ever repaid to you? A. The $1,500 was applied on this stock.

Q. No part of that was ever repaid? A. I don't understand the question.

Q. You say you loaned the company $2,000? A. Yes, sir.

Q. That $500 of it was repaid to you? A. I did not say how much of it was.

Q. Well, how much was it? A. I cannot tell

without looking up the records—whatever the amount, the difference between the stock and the $2,000 loan—on the ticket in the safe—it was drawn out in cash from time to time, to use up the credit.

Q. You don't remember the amount of it? A. No, sir.

Q. Don't the books show how much the stock cost? A. Yes, sir.

Q. You can figure the difference between what the books show the stock cost, and $2,000? A. Yes, sir.

Q. What was the difference? A. I don't know until I check it up.

Q. Is not there a charge there of $1,500 on the books? A. That credit there is $1,500.

Q. Is there any other credits? A. I don't know where they are until I look at them.

Q. Did you ever make any inspection of the books to see whether there are any other credits or not? A. I have inspected the books at times.

Q. With respect to these certain items, did you ever make an inspection of the books? A. Yes, sir.

Q. Did you find any other credits besides this $1,500? A. I won't say——

Q. Will you point out any other credits besides the $1,500? A. I cannot do it now.

Q. Now, during the period that you made this alleged loan to the company of $2,000, you continued to overdraw the account as you had done previously? A. Whatever the books show.

Q. You did not stop overdrawing after you made the $2,000 loan? A. That loan of $2,000 was a separate consideration to apply on the stock; that was put in there to procure the stock; the negotiations were then on with my sister-in-law.

Q. Now, how long before you bought this stock from the Beyeas did you tell Mr. Fish that you made this loan of $2,000 to the company? A. Shortly after the money was put in the firm I apprised him of that fact.

Q. Shortly after you made the deposit of $2,000 and before you bought the stock from the Beyeas, you discussed this matter with Mr. Fish, did you? A. Yes, sir.

Q. You are positive about that? A. Yes, sir.

Mr. Harrison: I would like to call the counsel's attention to page 71 of Book 4 of the testimony.

Mr. Maxson: That does not cover this point at all; I want to find out whether this conversation with him, with Mr. Fish, was during that certain period, and whether the witness is sure about it; that is, between the time when he made the deposit of $2,000 and the time when he purchased the stock.

A. I talked with Mr. Fish between that time, before I went out there and before I made the loan.

Q. Where did you have that conversation? A. In New York, once or twice in New York.

Q. Did you have any conversation out at Montclair? A. I think so; I am pretty positive of it.

Redirect examination by Mr. Harrison:

Q. I show you "Exhibit H. V. 1," and ask you if that is the check which you received from me as part of the consideration price of a house which you sold to me? A. That is the check.

Q. Is the endorsement on the back of the check your endorsement? A. It is my personal endorsement.

Q. And is that the check which you deposited in the Bank of Montclair on the 18th of September, 1906? A. Yes, sir.

Q. I show you the book headed, "Bank of Montclair in account with A. Gould Harrison," and ask you what book that is? A. My bank book deposits.

Q. Familiarly known as the pass-book? A. Yes, sir.

Q. I direct your attention to an entry, September 19th, of $1,975, bearing on several entries "Jan'y 23, '06," and ask you what that entry represents? A. September, $1,975, deposited September 19, 1906, deposited to my credit.

Q. Where did you find that? A. I found it in my desk in one of the drawers, among a lot of other papers.

Q. This is the book which you testified had been lost, on your first examination? A. Yes, sir.

Mr. Harrison: I offer the book in evidence.

Marked "Exhibit H. 32."

Recross examination by Mr. Maxson:

Q. Is this the only bank account you kept, Mr. Harrison? A. I had three or four accounts, sometimes.

Q. I mean, during this period? A. I think that is the only one; I kept a little account in the Essex Bank, but I think that was after that.

Q. Then you think that this included all your bank business during that period—personal bank business?

Mr. Harrison: Objected to as immaterial.

Mr. Maxson: Then I object to the admission of the book as immaterial.

The Witness: I cannot say—this covers from 1905 to 1910.

Q. Don't you know how many bank accounts you had personally? A. I think I only had this one at that time; here is an entry in 1910; I think I had a little account in the Essex Bank at that time.

Q. Is your Essex Bank book here? A. No, sir; the Essex Bank was not in existence in 1910.

The Court: I can see no objection to admitting it now.

Mr. Harrison: If Mr. Maxson wants all his passbooks submitted we will submit them; I understand his objection to the book now is that it is not the only book showing the personal account of this man.

Mr. Maxson: If counsel will produce the other bank books for the period shown by that book, I have no objection to their all going in.

The Court: I shall allow it for this purpose.

Redirect examination by Mr. Harrison:

Q. I show you five books, all entitled "Trial Balance," and ask you where those books came from, and what part they play, if you know, in the bookkeeping scheme of the Harrison Milling Company? A. They came from the office of the Harrison Milling Company.

Recross examination by Mr. Maxson:

Q. Do you keep these books that you are now looking at? A. What do you mean?

Q. Did you write them—did you make entries in them? A. No, sir.

Q. Who did? A. The bookkeeper.

Redirect examination by Mr. Harrison:

Q. Do you know the handwriting in the books which I now show you headed "Trial Balance," and

beginning September 1st, 1902, and concluding March 1st, 1906? A. That is Mr. Coleman's handwriting, that is, most of it; as far as I can see, it is all Coleman's.

Q. Is that a book in which the trial balances of the Harrison Milling Company are shown? A. Yes, sir.

Mr. Maxson: I object; because the proof of Mr. Coleman's handwriting does not make the book properly admissible in evidence.

The Court: Do you admit Mr. Coleman is dead?

Mr. Maxson: I don't know anything about it.

Mr. Harrison: He knows as well as I do that those are the books, bue we will prove them.

Mr. Maxson: We will admit the fact of Mr. Coleman's death.

Q. You know the handwriting of Mr. Coleman? A. Yes, sir.

Q. Is the handwriting as appears in this trial balance which I show you his handwriting? A. It is, yes, sir.

Q. Do you know the custom of making the trial balances of the Harrison Milling Company? A. It is a copy of the ledger account.

Q. And is that trial balance which you there have before you kept according to the usual plan and method of making trial balances at the Harrison Milling Company? A. It is, yes, sir.

Mr. Maxson: I object to that question and ask that this answer be stricken out, on the ground that this witness has testified on numerous occasions that he did not know anything about keeping books—that he was an amateur and did not know how these books were kept;

now, he comes here and testifies to the manner in which the books are kept.

The Witness: Of course, I know this is a trial balance book, I have read the accounts off in the ledger to the bookkeeper; I know how to take a trial balance. I had reference to opening and closing a set of books. I know what a trial balance is.

Mr. Maxson: What is the date of the trial balance?

Mr. Harrison: September 1st, 1902, to May 1st, 1906.

I offer this trial balance.

Mr. Maxson: I object to its admission unless we can make an examination of the book and see what it contains.

The Court: You may do that.

Recross examination by Mr. Maxson:

Q. Are these books just abstracts from the ledger account? A. They are copies of the ledger account.

Q. Are these same figures contained in the ledgers? A. They should be.

Mr. Maxson: We have no objection to the book, if that is so—subject to inspection.

The Court: They will be admitted.

Mr. Maxson: Subject to our motion to strike them out as part of the evidence if it is shown that they are not copies of the ledgers?

The Court: Yes.

Redirect examination by Mr. Harrison:

Q. Did you ever show any of these books to Mr. Fish? A. I have, yes, sir.

Q. Which of them? A. He has seen most all of

them; he has at times seen all of them; and here is one that he and I and Mr. Tichenor went over two or tree days to look over all the accounts, and to see what the method of payments was, and Mr. Tichenor has notated here on the accounts, how long the accounts have been running.

Q. And when did you and Mr. Fish and Mr. Tichenor go over that trial balance? A. In the day time, at the office.

Q. What year? A. That was in 1909 and 1910.

Q. Can you fix the time? A. From September 1, 1909, to February 1, 1910, during that time.

Q. What portion of this book did you go over with Mr. Fish? A. We went over all the accounts from beginning to end, and Mr. Fish asked Mr. Tichenor at the time if he would not make a notation so that he could look at them more readily—to see what had become of them; and there is nothing on there to tell me just exactly what time it was, but I think it was just after he came out there, October, November or December.

Q. Now, does the amount of your open account appear on this book and if so upon what page?

Mr. Harrison: I will call this "Page A."

Q. (Continued.) Now, during that conference did you discuss the status of your account as it then appeared on this trial balance? A. We took, as I remember it, several accounts from beginning to end, and Mr. Fish asked questions about all of them; we took, probably, four days, at times, and I remember that my account was spoken of—merchandise, profit and loss, and he would ask questions, and I had it explained and we went clean through it at that time.

Mr. Harrison: The trial balance books will be marked "H. V. 3, H. V. 4, H. V. 5, H. V. 6, H. V. 7."

Q. I ask you if you ever discussed or showed Mr. Fish "Exhibits H. V. 4 to H. V. 7," inclusive? A. Yes, sir.

Q. What was your general custom as to exhibiting the books to Mr. Fish?

Mr. Maxson: I object to any such proof of any such general custom.

The Court: Strike out the words "general custom."

A. They were shown to him whenever he asked for them, which was frequently, and generally at the end of the year when he was out there at the meeting.

Q. At any other times? A. Yes, sir, at other times.

Q. Did you, in discussing these trial balances, call his attention particularly to your open accounts? A. They were always spoken of.

Mr. Maxson: I object to it on the ground that what his attention was called to is not evidence; let us have the conversations which took place; I think we are entitled to have the conversations.

The Court: The objection is overruled.

Q. Can you designate which of these books which I show you were called to his attention? A. Why, let me see; here is one that he has looked over (indicating).

By the Court:

Q. What year is that? A. 1903 and 1904.

Q. As they were entered, do you mean? A. After the balance was taken, I remember showing him this book.

Q. Did you show him each book in that way after

the trial balance was taken? A. I have shown him some of these books, and particularly this one, "H. V. 3."

Further redirect:

Q. I call your attention— A. (Continued.) We had this book under discussion, figuring out all the accounts as to the time of credit—that is, the limit of credit that was given these customers; I could not devote all my time to time; at different times during hree or four different days we would have all the accounts.

Q. I call your attention to "Exhibit H. V. 6," and ask you if you recall showing this book to Mr. Fish—this one, "H. V. 6"? A. I guess not—that was before he came in.

Q. I call your attention to "H. V. 5," and ask you if you ever called that book to his attention? A. Yes, sir.

Q. Was any particular reference made to your account, as it there appears? A. This was taken from ledger folios, instead of alphabetically arranged.

Q. Have you ever seen him examining that book or any of these other trial balances? A. I have.

Q. Alone or with somebody else? A. He has examined them with Tichenor and myself, and alone.

Q. In your cross examination at the last hearing you made some reference on page 80 to an overdraft of $865.91; what was the situation of that overdraft if you know, at the time of the discussion with Mr. Fish of this resolution purporting to be dated September 30, 1909?

Mr. Maxson: I object to the witness being asked a question which does not refer to any

book or exhibit in this case, and having counsel hand him something before him for the purpose of refreshing his recollection.

Q. I hand you "Exhibit D. A. 4"——

Mr. Maxson: I object to the question.

The Court: Reframe the question.

Q. Handing you "Exhibit D. A. 4," and directing your attention to a total in pencil, a debit in pencil of $346.14, I ask you if that correctly represented the amount of your withdrawal—as of that period?

Mr. Maxson: I object to the witness's attention being called to any pencil memorandum on an exhibit which purports to be part of the books, as I understand it, of the corporation.

Mr. Harrison: I will ask the witness to add it then.

Mr. Maxson: Objected to.

Mr. Harrison: The question is withdrawn.

Q. When did you and Mr. Fish agree upon this resolution of September 30, 1909, contained in "Exhibit C 1" for complainant? A. We agreed on this about November.

By Mr. Maxson:

Q. What year? A. 1909.

Further redirect:

Q. At the time you agreed upon that, and fixed the salaries at $3,000 a year for each of you, was there any discussion had concerning the—did you and Mr. Fish have any discussion concerning the status of your withdrawals as they appeared on "Exhibit D. A. 4"?

Mr. Maxson: I ask that the witness be directed to answer that question "Yes" or "No."

Q. Did you? A. Yes, sir.

Q. What was the conversation between you and Mr. Fish at that time? A. At the time we arranged or decided between ourselves—Fish and I—

Mr. Maxson: I move that that be stricken out; let us have the conversation.

The Court: Strike it out.

A. We arranged between ourselves that our salaries should be $3,000 a year.

Mr. Maxson: I move that that be stricken out.

The Court: Yes, strike it out. Just state what took place.

A. (Continued.) We talked over the matter of income, and agreed on a salary for each one of us of $3,000 a year.

Mr. Maxson: I move it be striken out as not responsive to the question.

Mr. Harrison: Strike it out and go ahead.

A. (Continued.) He said his salary was to be $3,000, and I said mine would be the same; and I told him at that time that I had cash slips in the safe and some old accounts that I was still owing, and the old agreement should be adjusted before these salaries went into effect.

Q. Didn't you at that time show him or call his attention to these cash slips? A. Yes, sir.

Q. Where were those cash slips? A. In the safe.

Q. Did Mr. Fish examine the cash slips at that time? A. Yes, sir.

Q. Has he examined them at any other time? A. Yes, sir.

Q. Before or after? A. Both.

Q. What reference did you make to accounts under the old agreement—what did you say about the old accounts? A. I showed Mr. Fish at that time the cash slips, and told him that I owed some other accounts that were to come in under the old agreement previous to the salaries of $250 each per month.

Q. Did you say anything about any particular old accounts? A. I mentioned one particular old account.

Q. What particular old account did you mention? A. An account of a carriage that I owed for, of J. G. Mockridge, bought in 1907, I think.

Q. What did Mr. Fish say after you had referred to the withdrawals represented by cash slips and the old accounts which you say existed under the old agreement? A. He said it should be all adjusted, and that I should have credit for it.

Q. Why was not proper credit given to you on those books?

Mr. Maxson Objected to as calling for the witness's conclusion.

The Court: Strike it out.

Q. What date did Mr. Fish begin to draw his $250 a month salary, if you know—showing you a portion of "Exhibit D. 4"? A. On November 30th Mr. Fish drew his October salary and his November salary, amounting to $500.

Q. Upon what date did you begin to draw your $250 salary? A. December 6th was the first time—$250 a month.

Q. Then you did not draw your salary for the months of October and November, 1909? A. Only $20 a week was what I was drawing then.

Q. Was any reference made to the credit which

you had by reason of your failure to draw your two salaries for October and November, 1909, and what should be done with that credit?

Mr. Maxson: Objected to, because there is nothing to show that this witness knows; I object because he has not been qualified.

The Court: The objection is overruled.

A. There was not any credit given me on the allowance of salaries due.

Q. Did you have any agreement or conversation with Mr. Fish concerning the credit for your unpaid salaries for those two months? A. I had an understanding or agreement—

Mr. Maxson: Objected to—yes or no.

A. Yes, sir, I had an agreement with him.

Q. What was that agreement?

Mr. Maxson: I object to the form of the question; let us have the conversation.

The Court: What form did the agreement take?

Mr. Maxson: May it please your Honor, I don't object to this testimony at all; I want the conversations.

Q. What was it, a written or verbal agreement? A. A verbal agreement.

Q. And consisted of conversations between you and Mr. Fish? A. Yes, sir.

Q. What was said? A. Mr. Fish said to me that my account should have the proper credits which were due me, and that the old account that I spoke of, in the old slips, should be charged to my account by the other agreement, before the salaries, $250 a month, went into effect.

Q. Did you say anything to Mr. Fish at that time or at any other time, concerning other credits which should be allowed to you on your salary account? A. Why, yes.

Q. What did you say to him? A. At that time I told him there were some other credits, that I had only been drawing $20 a week all the way through, and there were further allowances amounting to so much; the books will show it—$2,500 or $2,600, I think.

Q. After you told Mr. Fish about these further credits to which you believed you were entitled, what did he say? A. He said that he was willing that I should have these credits, and they should be properly entered up on the books.

Q. Reference was made this morning to a meeting at which your salary was raised from $20 to $40 a week, and at which overdrafts of $4,552.62 were charged off; when was that meeting held? A. I think two years after Mr. Fish came in.

Q. And when did he come in? A. I think it was in 1903.

Q. At the third day's hearing some reference was made to a business—page 119, bottom of page—reference was made to a business recently started at Caldwell, New Jersey, in which you were one of the incorporators; will you state the circumstances of the formation of that business?

Mr. Harrison: If the Court please, that was objected to at the time, as the Court may recall, and it is probably going to open up quite a wide range of inquiry for cross examination, and if the Court has reached any different conclusion as to its materiality at this time, I will not go further into it, I will withdraw the question.

Mr. Maxson: We object to the withdrawal of the question.

Mr. Harrison: If it is not material, there is no use taking up half a day.

The Court: I don't think it is material, but there is no objection to it from the defence; however, you have a perfect right to withdraw the question.

Mr. Harrison: I will put the testimony in.

Q. (Question read.) A. This Mr. Stevens had been acquainted with me for a long while, a number of years, and had been wanting to come in partnership in Montclair with me, if he could, and I did not see where he could do anything of that kind, and I could not give him encouragement, and after, he had another acquaintance in Caldwell, Crane and Hicks, who were in the grain business, who had a good trade, and who owned some property there, and Mr. Stevens said, "Well, if I cannot go in with you at Montclair I am going in business at Caldwell anyhow, and I can get somebody else interested with me;" but I in talking it over with some of my friends and my wife and others, we thought it would be better for our business to have some connection with it, and so, after some agreement, or after some talk with Mr. Stevens, he said that if I would give him a little help and ideas that he would buy his grain of us, most of it—that is, the stuff which we are manufacturing, and other stuff, and help us all he could—that he would be glad to be of any assistance that he could; and I thought that, rather than let him go into business with anyone else, that it would be better for me to have some association with him; so we have sold him thousands of dollars of stuff since the incorporation, and have made a profit on the goods.

Q. And did you have any understanding concerning his interference with your business— A. Mr. Stevens has not interfered at the present time; he has not disturbed any of our trade at all, that I know of, and he said he did not go into it for that purpose, but that he was looking for new territory.

Q. You have stated in this morning's testimony that you had talked with me at the time Mr. Fish had come into the business—do you know where I was living in 1903? A. I do not.

Q. You know that I was in Maryland at the time? A. I remember now that you were.

Q. You say you have talked with Trimble and Dabney? A. Yes, sir, I talked with Dabney; he was boarding with us at the time.

Q. Did that conversation relate to these transactions with Mr. Fish in general, or only in detail? A. With Mr. Trimble—I went to Mr. Trimble for advice how to do it, and I asked for his advice what to do, and he gave me advice. I was executor for the estate of Mr. H. Mullen, and I wanted to know if I had the right to sell the stock or dispose of it—what right we had; I asked Mr. Trimble for advice; I did not go to my brother because he was not there to go to.

Q. Who prepared the affidavits or affidavit referred to this morning by Mr. Maxson? A. I think that the affidavit referred to this morning was the affidavit that Mr. McCarter prepared; I had the conference in his office; he prepared some, and you prepared some.

Mr. Harrison: I would like to ask permission of the Court to let the answer filed by me in this case stand as filed, and to ask permission to file a cross-bill which shall properly introduce on behalf of these defendants the defense that the stock purchased by the complainant

—alleged to have been purchased by the complainant—was not purchased, but that the same was taken as collateral for a loan made by him; and further, to ask that that answer may set out a tender on our part of the amount of that loan, $4,000, as I recall from the testimony, and interest to date, at the legal rate.

Mr. Maxson: I object to that, because I think the record conclusively shows that this was not a loan, and never intended to be a loan. There cannot be any question in the world from this record; and that further, in making my objection, that never in this litigation, from the beginning down to the time that Mr. Fish, on the witness stand, used the word "collateral", was the loan ever mentioned by anybody.

Mr. Harrison: We never had the opportunity. Now, that question of fact, as I take it, is a question for the Court.

The Court: The Court will conclude at the end of the entire testimony, whether it is necessary to amend the answer or file an answer by way of cross-bill; at present, the Court cannot see the necessity of it.

Recross examination by Mr. Maxson:

Q. You recall now, on your redirect examination here, that you did talk to Mr. Fish in detail about the resolution increasing your salaries to $3,000 a year? A. Yes, sir.

Q. And you remember the conversation? A. Whatever I said in the direct examination——

Q. That is not so very long ago; you remember it now as well as you did then? A. Whatever I said a few minutes ago, I repeat.

Q. Did you have a conversation with Mr. Fish relating to that resolution increasing your respective salaries to $3,000 a year? A. Yes, sir.

Q. What did he say and what did you say at that conversation? A. (No answer.)

Q. You remembered it here fifteen minutes ago; what did he say and what did you say at that conversation? A. We agreed that our salaries should be $3,000 a year.

Q. What did he say and what did you say; I want the conversation that took place between you, as you recall it now. A. I don't know how to put it in any other way than I have put it; I cannot say just exactly what either one of us said, unless I explain it; I shall have to state it in my own way.

Q. What was said by you and what was said by Mr. Fish about your salaries? A. At the time that this salary was spoken of——

Q. I am referring now to the time when you discussed the resolution which increased your salary and Mr. Fish's salary to $3,000 a year. A. Mr. Fish came out there, and he said that he, of course, had to have something to live on; we had figured over the profits of the business, and he thought—he told me he thought that $3,000 would be fair, and I had figured over my accounts, and he found I had been drawing $2,600 or $2,700 a year, and it was agreeable to both of us that we should each draw $3,000 a year, and my account previous—before this agreement—that there should be an adjustment made on the books, as I had had some cash slips which were not charged up yet, and that were in the safe, and I had some bills that I had contracted before this agreement went into effect, and Mr. Fish said he would be agreeable to have them adjusted on the books.

Q. Did you adjust these cash slips and bills after this conversation with Mr. Fish? A. They were

charged on my individual ledger account, but I have never had any account for my allowance.

Q. That is not an answer to the question—did you adjust these bills after this conversation with Mr. Fish? A. These cash slips are charged on my individual ledger account, and the old bills that I spoke of are there, and that check that is in evidence of $115 was one of the items of my indebtedness before that agreement.

Q. When was that? A. He agreed that we would adjust these accounts—that was part of the agreement, that I should clean up my accounts and adjust them, and have a settlement of my accounts, and start out fresh on this $3,000 a year, because he drew his salary, and I was only drawing $20 a week; the salary account showed a debit of $20 a week charged to me—charged to salary account.

Q. Was anybody else present when this agreement was made? A. The bookkeeper.

Q. Was not Mr. L. H. Fish there? A. I won't say whether he was or not; I don't remember his being there; he used to come out once in a while with his father; I won't say he was there at that time.

Q. You fix the day of this occasion as November, 1909? A. What occasion?

Q. This resolution. A. I don't know when the resolution was put in.

Q. Didn't you say on your redirect examination here a little while ago, that it was November, 1909? A. I said I thought it was November.

Q. You still think so? A. I did not say I was positive.

Q. Did you pay the carriage account to Mockridge after this conversation with Mr. Fish with respect to the increase of your salaries? A. I did not pay

him his adjustment on the ledger account; it was adjusted on the ledger; Mockridge had credit for it on his account; Mockridge had credit for it on his ledger account; and whatever he was credited with I was charged on my account.

Q. Then, is this the transaction; that Mockridge was a customer of the company and owed it some money? A. Yes, sir.

Q. And you got a carriage from him and gave him credit on the books of the Harrison Milling Company for this carriage? A. I don't understand the question.

Q. Mockridge owed the Harrison Milling Company money? A. A little money, yes, sir.

Q. You credited his account for this carriage? A. We owed Mockridge.

Q. Did you credit his account with this carriage item? A. Yes, sir.

Q. And at the same time you credited him up with some other things that the Harrison Milling Company owed you? A. Yes, sir.

Q. So that this was a mixture of your personal account and the Harrison Milling Company? A. Yes, sir.

Q. How about your books—wasn't it a mixture on your books of your individual account with that of the Harrison Milling Company? A. No, sir.

Q. Did you have two ways of drawing this $40 a week, one, $20 of it, in one account, and $20 of it in another account? A. There was $20 a week charged up on the salary account each week—the other charges appear in my individual ledger account as they were drawn.

Q. And that was all you drew? A. According to the books.

Q. That was charged up to you as salary? A. Whatever my account shows is what I drew.

Q. I am asking you how it was shown on the books of the company, if you know? A. It was shown in the individual ledger account, and in the cash slips in the drawer.

Q. And in no other way? A. I don't know of any other way.

Q. Now, you say that Mr. Fish said also at this time, that he wanted to show that all of the charges against you for overdrafts, were taken care of before this salary went into effect; is that so? A. I don't know whether I said that or not; I said it was understood between him and me, that my expenditures and cash slips and bills that I owed, were to be adjusted before this salary went into effect.

Q. Then, after that you were to pay nothing but the $3,000 a year? A. After that agreement was to be made, and the accounts were settled, I was to get $3,000 a year.

Q. And no more?

Mr. Harrison: Objected to.

A. I don't know of any more.

Q. That is all you were to get under your agreement? A. We were to get $3,000 a year apiece.

Q. And no more? A. I said I don't know of any more.

By Mr. Harrison:

Q. And no less? A. I think I have had less from the way the books show up.

Further recross:

Q. And you told him at that time that you had only been drawing $20 a week during the whole period; didn't you so testify? A. No, sir, I told him that the salary account showed a debit each week of $20 per week.

Q. And that that was all that you were drawing for salary; did you tell him that?

Mr. Harrison: For a portion of the period, he said.

Q. Now, when did he say this resolution giving you these credits and making this salary should be put in the minute book; what did Mr. Fish say? A. What resolution are you referring to?

Q. The resolution adjusting your account and increasing your salary to $3,000 a year? A. It was talked of at the time that he made this agreement of $3,000 a year.

Q. When did he say "Put it in"? A. He said to get the amounts and get it adjusted, and we would put it right in the books, and it was neglected, and I did not do it; the account has always stood open since then.

Q. Now, you said on your redirect examination, that you went to Trimble for advice and he told you how to do it; what did you refer to? A. I did not say he told me how to do it.

Q. What did you say? A. I went to Trimble for advice at the time that Mr. Fish got this stock.

Q. And did you tell him then that Mr. Fish wanted a loan on the stock? A. I don't know what I told him; the estate had some stock in there, and all I asked him was, whether we had the authority, and he said that the only thing to do was to elect a president, which we did.

Q. Did you say anything about Mr. Fish coming in and making a loan to the company? A. I presume I did.

Q. What did he say to that? A. I cannot tell you what he said to that; it is so long ago; it is ten years ago or more.

Q. Did he direct you how to put the transaction through? A. I don't think I mentioned whom the

stock was going to, but I asked him if I had the authority to sell the stock; I believe that is all I asked him.

Q. You did not say anything to him about a loan on it? A. I asked him if we had authority to issue any stock—I won't say sell; I asked him if we had the authority and what we should do, to issue stock.

Q. Did he tell you to pass a resolution to issue it? A. Whatever he told me I tried to do; I have forgotten what he told me.

Q. Now, if this were a loan, as you say it was, how do you account for the fact that you transferred a share of this stock to Mr. L. H. Fish? A. Well, we did that at one of the meetings by advice of counsel.

Q. Which affidavit did Mr. McCarter prepare, that you referred to? A. I don't know—whatever he signed there, is the one he prepared.

Q. Did he take the affidavit himself? A. I was at his office, and I was at Church's, and my brother's; there have been so many papers, I would not swear to it.

Q. You don't remember any conversations about whether it was a loan or a purchase? A. I left it all to my counsel.

Q. Do you remember at the conversation that took place between you and your counsel at that time, whether anything was said in regard to its being a loan or a purchase of stock? A. The understanding was with me—I don't know how they understood it—from my talk, it was a loan; I told them it was a loan.

Mr. Harrison: I would like to ask Mr. Maxson if he has concluded his cross examination.

Mr. Maxson: Yes, I have. I would like to say that practically all the matter brought out on redirect examination was new matter.

Amos Gould Harrison—By Defendants—Recross

Recross examination (continued) by Mr. Maxson:

Q. That business that you spoke about at Caldwell; is that the same business as the Harrison Milling Company—the same line of business? A. It is the grain business.

Q. What is the difference in the machinery? A. We have machinery in Montclair that does grinding, and we have none of that in Caldwell.

Q. This man Stevens, he is a mill man, is he? A. He is a business man.

Q. Had he ever been in the milling business before? A. No, sir, but he has a man with him who understands it thoroughly.

Q. What is his position in the company? A. Salesman and manager; the man he intended to have with him at first is a grain man, but he has not come with him yet, because of a mix-up.

Q. And he does not sell any of the customers in Caldwell that had previously been sold by the Harrison Milling Company? A. There are one or two that he has sold that we didn't care for, that are slow accounts, and we would rather let somebody else have them.

Q. You did not think that there might be any difficulty about having the name of the company in Caldwell "The Harrison Company," and in Montclair, "The Harrison Milling Company"; did you think about that?

Mr. Harrison: I can give the further details, if necessary, but I do not think it is necessary.

Mr. Maxson: That is all.

Mr. Harrison: Now, will the Court fix another day?

The Court: I cannot do so at present.

Adjourned sine die.

IN CHANCERY OF NEW JERSEY.

Between
FREDERICK K. FISH,
Complainant,
and
A. GOULD HARRISON,
Defendant.

On Bill, &c.,
Testimony.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Newark, New Jersey, on the fifteenth day of October, 1913, before Hon. VIVIAN M. LEWIS, Vice-Chancellor.

Appearances as before noted, with the exception of Mr. McCarter, who was not present.

Mr. Harrison: The only witnesses that I have to produce in continuation of the case for the defendant are Mr. Tichenor and myself. If your Honor directs, of course, it will be necessary for me to go on the witness stand, but your Honor may recall, that at the hearing before the last hearing, or it may have been at the last hearing, your Honor said that an opportunity would be presented for my examination by some person other than myself.

The Court: I said that yesterday to Mr. Church; he came before the Court and stated that you wanted to be examined, and I said that an opportunity would be given to have you examined by Mr. McCarter, but that we would proceed to-day and go as far as we could in this case.

Mr. Harrison: Another question I would like to ask Mr. Maxson is: Has he asked for Mr. Howell's presence here? He is the cashier of the Montclair Bank. Mr. Howell arranged to be here at the hearing before the last, and as I recall, he was examined. Now, there was no demand, as I recall, for his return, but I had some sort of informal notice to produce him at the hearing before the last and did produce him. Now, I want to be set straight before the Court. While there is no application to produce him, I am willing to get him here.

Mr. Maxson: We don't want him; we have nothing further to ask him.

BERT B. TICHENOR, being recalled, testified as follows:

Direct examination by Mr. Harrison:

Q. You were directed to produce the check book —the cash slips from the safe of the Harrison Milling Company, as of a period several months ago; have you produced those slips? A. I have them with me.

Mr. Harrison: I offer in evidence two slips with marginal numbers 2788 and 5509. They relate to a general practice, showing the general custom of the Harrison Milling Company in the matter of the so-called cash slips, about which considerable evidence has been adduced, and we were ordered to produce them at this hearing, and it seemed to me to be the most regular procedure to put them in on this occasion.

Mr. Maxson: State the purpose of their introduction in evidence.

Mr. Harrison: First, to show the method of the keeping of these slips by the Harrison Milling Company. Second, in response to the order of production on the part of counsel for complainant. I might say further to the Court, that, while I appreciate the fact that this is merely cumulative, it seems to me that it is for the better understanding of the case, and it is quite proper that they should go in.

Mr. Maxson: I would like to cross examine on them before they are introduced in evidence, and find out what they relate to.

The Court: Did you call for their production?

Mr. Maxson: I asked that all the slips in the drawer should be produced.

The Court: Then, I think they are there practically, but I won't limit you on that.

Cross examination by Mr. Maxson:

Q. Are those slips dated? A. Yes, sir.

Q. And in whose handwriting? A. In mine.

Q. And what is the date? A. There is no year down—it is 1/20; there is no year on the slip; they were current slips used at that time.

Q. And are those all the slips that were in the drawer at that time? A. Yes, sir.

Q. Any more in there since? A. Yes, sir—of the same order.

Q. What is the charge or credit, "A. Simonson, $2,423"? A. The check was not good when deposited, and I put it in the bank for collection, entering it on there to keep my cash straight.

Q. And the other slip is dated when? A. 6/24/13.

Q. June 24, 1913? A. Yes, sir, and also June 25.

Q. That is charged to you personally? A. Yes, sir.

Q. For what? A. Cash drawn.

Q. What do the other entries on the previous slip, dated 1/20, relate to? A. The next entry is a check of M. S. Crane, who has several notes with us—or, we have his notes; and when a note comes due, he pays a certain amount and renews the balance; the check is usually not good at the time he gives it, but is made good in a few days afterwards when I put them in for collection—entering them on this slip. There is one more of Simonson's down there, which has been paid since.

Q. What is the entry: "Crane, 5/19"? A. Crane, $25, that is the same thing.

Q. All those entries relate to either notes given the company by A. Simonson or M. S. Crane? A. They relate to checks given in part payment of notes or on account of notes.

Q. And are those the only entries that you made of the receipt of these checks? A. No, sir, I gave the man credit for it, at the time that I received it, on the books—on the cash book.

Q. Is that so with respect to all of those items on the slip 2788? A. I think so, yes, sir.

Q. Don't you know? A. They must be entered on the cash book.

Q. Why did you enter them on this slip? A. I gave whoever the party was, Crane or Simonson, credit for the amount of their check when they gave it to me, and put it in the cash drawer; now, I take it out of the cash drawer and take it to the bank for collection, and I must have some record of it; I cannot put down as a deposit, so I enter it for collection in the bank, and hold this item in the cash drawer as cash until that check is paid;

then I cross it from here, and enter it in the check book as a deposit.

Q. Didn't you testify in your previous examination that the entries made on these slips kept in the drawer were the original entries and the only entry?

Mr. Harrison: I don't wish to be captious, but I think he should direct his attention to the testimony; that is quite the usual practice.

The Court: That is the usual practice; did he testify anything about it?

The Witness: I remember testifying in regard to that, but I could not state what it was.

Q. What is the custom in respect to that? A. In regard to cash drawn, that is the original entry on the slip.

Q. And the only entry? A. That is the only entry.

Q. And that is uniformly so with respect to cash drawn by Mr. Harrison or yourself? A. Yes, sir.

Q. Or other people? A. Other people don't draw on the slips.

Q. Didn't you produce a cash slip here relating to some other financial transaction; wasn't it offered in evidence? A. That was Mr. Harrison's slip, I believe.

Q. Didn't the slip which was produced, from the drawer here, relate to a financial transaction with some other person other than you and Mr. Harrison? A. It was Mr. Harrison's charge—his slip—another man's check was drawn in the transaction —that is the only way.

Q. Now, how soon after you made these entries

on these slips did you put them in the book? A. Referring to these entries?

Q. No; any entries—referring to the custom now of keeping books? A. If it was settled, paid in cash, it does not go in the book at all.

Q. Suppose it was not paid? A. It would remain on this slip.

Q. For how long? A. Until taken care of in some way.

Q. No matter what the period was? A. Previously, in regard to Harrison's and Fish's account, they were usually charged up at the end of the year.

Q. When you got up your trial balances, what did you do about these slips in the drawer? A. If they were held as cash, they were counted as cash.

Q. So that, whatever amount of debit was on these slips, was put in your trial balance as cash on hand? A. Counted as cash, yes, sir.

Q. And that was uniformly the custom? A. Yes, sir.

Q. No matter who owed the money, as shown by those slips, you counted it as cash when you made up your trial balance? A. Yes, sir.

Mr. Maxson: Am I to understand that Mr. Tichenor is produced here for further examination at my request, or have you put him on for further direct examination?

Mr. Harrison: For further direct; but you may continue, if you wish, along that line. The Court directs the reception of these slips?

The Court: Yes, for that purpose.

Marked "Exhibit C. A. X. 1."

Marked "Exhibit C. A. X. 2."

Bert B. Tichenor—By Defendants—Redirect

Redirect examination by Mr. Harrison:

Q. Have you made an analysis of the A. G. Harrison account, as shown on the books of the Harrison Milling Company? A. Yes, sir.

Q. Have you summarized the results of that analysis? A. Yes, sir.

Q. What does that analysis show with respect to withdrawals made by A. G. Harrison, both as respectitng the weekly salary payment and the open account withdrawals? A. I have made up a statement of the account in regard to that.

Q. And have you the statement with you? A. Yes, sir.

Mr. Maxson: I have no objection to this witness summarizing, in order to save time, but I would like to have some reference made from this memoranda to the entries in the book, in order that we may verify——

Mr. Harrison: I promise Mr. Maxson that I will follow it up by connecting this summary with the books.

Q. What does that statement show?

Mr. Maxson: I submit that is not the way to get it on the record.

Q. What do the books show? A. It shows that Mr. A. Gould Harrison was charged from February 1, 1906, to August 1, 1906, $611.52; from August 1, 1906, to August 1, 1907, $1,015.57; from August 1, 1907, to August 1, 1908, $2,561.20; from August 1, 1908, to August 1, 1909, $2,050; from August 1, 1909, to date, $868.58, making a total of $7,106.87 charged against his account.

Credits on the account show for salary allowed and incidentals: Salary, February 1, 1906, to

August 1, 1906, $680; salary, August 1, 1906, to August 1, 1907, $1,040; November 30, 1907, credit by 1 runabout to W. H. D. Horton, $65; February 1, 1909, cash for pony, $50, making a total of $1,835. Then, salary credits not shown on ledger, but which Mr. A. Gould Harrison——

Mr. Maxson: Wait a minute. I object to any such item going in, if it is not shown on the books of the company; I understand these items were taken from the books of the company.

Mr. Harrison: I can get at it in another way, if he insists on strict proof.

Q. What do the books show during the period from 1906 to October 1, 1909, as to the amount of withdrawals by A. Gould Harrison against the salary account?

Mr. Maxson: I object—I think this witness's attention should be directed to a certain book; it appears these entries were made in some book, but not in the ledger.

The Court: He may ask that general question. Answer that question.

Mr. Maxson: I object to the question.

Q. (Question read.)

By the Court:

Q. As shown by this statement?

Mr. Maxson: I object to the question. The witness's attention is not directed to the certain book containing these items, and because the book is the best evidence.

The Court: The objection is overruled.

A. This statement shows an amount of $7,106.87 charged against the account.

Q. (Question read.) A. This does not show the charges against this salary.

Further redirect:

Q. Can you, by reference to the book, show the amount of charges against the salary account for the years during that period? A. Yes, sir.

Q. I ask you to do so. A. (Witness refers to cash book, "Exhibit D. A. 1.") The payroll in cash book shows that Mr. A. Gould Harrison drew $20 per week.

Mr. Maxson: You are referring to an item; may we have the page?

The Witness: Page 257.

By Mr. Maxson:

Q. Under what date? A. May 26, 1906, it shows an item of A. Gould Harrison, $20—charged against salary account.

Further redirect:

Q. Will you complete the answer to the question?

Mr. Maxson: By referring to the book each week, it will show he drew $20 each week during that period; each payroll item shows the same amount.

Q. And on practically the same day in the week was the salary drawn? A. On the Saturday of each week.

Q. What do the books show as to credit in the A. Gould Harrison individual account, so far as allowances are concerned on the salary account?

Mr. Maxson: Just a minute; I don't understand what that question means.

Q. (Question withdrawn.)

Q. Were any credits under the general heading of "Salary" shown on the books in the A. Gould Harrison individual ledger account? A. Yes, sir.

Q. What credits are shown, and where are they shown? A. 1906 and 1907, February 1, 1906, to August 1, 1906, he has credit for $680 salary.

Q. Referring to page 58 of "Exhibit D. A. 3"—and what period does the cash book show that that credit covers? A. That credit comes from the journal of July 31, 1906.

Mr. Maxson: I do not see, may it please the Court, why the Court's time should be taken with this testimony. We do not contend that Mr. Harrison did not get his salary of $20 a week.

Mr. Harrison: The point is this: considerable testimony has been adduced by the complainant, that the sum of $40 was fixed as the maximum weekly drawing account, by reason of that resolution of November, 1905; we desire to show that he only drew $20 a week, and that he is entitled to a further credit of $20 a week under the account; and it seemed to me that this summary of the situation would set the whole thing straight before the Court, so that at a glance you could tell exactly how the account stood, and what it meant, and it seems to me to be quite material.

The Court: Does not that come in afterwards? I think it entirely immaterial to this issue.

Mr. Harrison: Wouldn't it have a bearing on the question of a right to an accounting, as tending to show that even under their own theory there were no withdrawals over and above the amount that they were allowed?

The Court: I think not; I am inclined to think that is immaterial to this issue.

Mr. Harrison: Not to be too persistent, but if their position be that there were these overdrafts, and if we can show that under their own resolution—which they approved—that these overdrafts do not exist, I think it is material, and would not give them any right to an account.

Mr. Maxson: The question is, whether he has so conducted himself that this Court is bound to require him to account.

The Court: I don't think this is material at all.

Mr. Harrison: It certainly does seem to me, that if we can show that even under their own resolution—which they never denied, and which they admitted in their pleadings—that we have conducted ourselves in accordance with that resolution, that, therefore, there is no right to an account.

The Court: It is a matter for the consideration of the Court.

Mr. Harrison: Entirely so; and as I said before, my idea——

The Court: You are going to show by these books, that Mr. Harrison was entitled by the resolution to draw $40, and has only drawn $20 a week; I think this is immaterial.

Mr. Harrison: And if the Court please, how can I meet the charge which they make in the bill, and which they have proved, that there were withdrawals of eight to ten thousand dollars?

The Court: Without anticipating what the Court might conclude upon the case, does not

this right to account rest in a large measure upon the status of Mr. Fish in this corporation, and his right to ascertain just the condition of affairs in it?

Mr. Harrison: I agree with your Honor entirely, but the theory of the case is, that they were permitted to put in this evidence under my objection that there had been withdrawals of eight or ten thousand dollars; that Harrison had admitted those withdrawals (continues argument).

The Court: I will rule it out as immaterial.

Mr. Harrison: I desire, in this connection, to pray an exception.

Q. I show you "Exhibit H. Z. 3," being the trial balance book of the Harrison Milling Company from March 1, 1909, to February 1, 1910, and I ask you by whom that book was prepared? A. I prepared it.

Q. And was it also kept by you? A. I am the assistant, yes, sir.

Q. Has that book ever been shown to Mr. Fish by you? A. Yes, sir.

Q. On how many occasions? A. Two or three different occasions.

Q. And can you fix the time and the circumstances of one or more of such occasions? A. Why, it was during the latter part of the year 1909, October or November.

By the Court:

Q. Shown by you to Mr. Fish? A. Yes, sir.

Further redirect:

Q. This book was shown by you to Mr. Fish, October or November, 1909? A. Yes, sir.

Q. And will you explain the circumstances of your showing it to him, and what transpired at that time? A. Mr. Fish and Mr. A. Gould Harrison were going over the account at the time, and kept referring to me to explain some amount of some account in the trial balance book.

By the Court:

Q. How long a time did you spend with them? A. At different times, for two or three different days, an hour or so, perhaps, each time; finally, he asked me if I would make memorandas on the different accounts—Mr. Fish did—showing how long the account had been standing, and the condition of the accounts, whether they were good or bad.

Further redirect:

Q. In whose handwriting are the memoranda appearing on the extreme right margin of the various sheets in this book? A. In mine.

Q. And did you at that time go over all the accounts in this trial balance? A. All the accounts, yes, sir.

Q. Does the account of A. Gould Harrison appear in this trial balance? A. Yes, sir.

Q. On what page? A. Page marked "A."

Q. And what does that A. G. Harrison account show? A. It shows the debit balance on the first of each month, from March 1, 1909, to February 1, 1910.

Q. What reference was made by you to Mr. Fish, or Mr. Fish to you at that time, concerning the A. G. Harrison account? A. He referred to it, as to all the other accounts; we went over them all.

Q. Did you show the trial balance now before you to Mr. Fish on any other occasion than these

occasions in October or November, 1909? A. Two or three different times; I cannot place all the different times, but I think at that time that we checked them up during those monhs.

Q. I show you "Exhibit H. Z. 44 to Exhibit H. Z. 7," inclusive, and ask you if you have shown any or all of these books to Mr. Fish? A. I don't think that I showed any of these to Mr. Fish, only the current trial balance book which we were using at that time.

Q. Which is "Exhibit H. Z. 3"? A. Yes, sir.

Q. Do you remember the occasion of the visit of Mr. Nasmyth to the office of the Harrison Milling Company, about September, 1910? A. I remember his visit to the office, but I could not fix the date.

Mr. Maxson: What is the purpose of this?

Mr. Harrison: To meet certain statements of Mr. Nasmyth.

The Court: He is on redirect.

Mr. Harrison: I desire to produce him for the purpose of putting in additional testimony.

Mr. Maxson: Objected to, because it is not proper redirect, and if counsel is going into it at any great length, I am going to object.

The Court: Are you going into it at great length?

Mr. Harrison: No, sir.

Q. Did you co-operate with him in any way in the examination which he made? A. I gave him such information as I could.

Q. And were there any books of account of the corporation which he asked you to present to him which you could not or did not submit to him? A. No, sir.

Q. Did you make any statement that certain of

the records and books of account were in the hands of the attorney of the Harrison Milling Company? A. No, sir.

Q. Did you show Mr. Nasmyth any cash slips at that time? A. I don't know.

Q. Were any debit cash slips ever made out by you, or to your knowledge, for withdrawals of cash by Mr. Fish? A. Yes, sir, they were.

Recross examination by Mr. Maxson:

Q. When did you first recall the fact that Mr. Fish had drawn cash from the company and you had put cash slips in the drawer for it? A. He got a check each month.

Q. Do you know what it was for? A. It paid his commissions, I understood.

Q. Didn't you keep the books? A. I kept the books, yes, sir.

Q. And didn't you know whether Mr. Fish was drawing a salary from the company or not? A. I did not know what it was for.

Q. Didn't you enter it in the books? A. Yes, sir, I did; it was charged up part of the time against salary account, and against expense account, and against merchandise account.

Q. Did he get merchandise from the company? A. No, sir.

Q. Well, you charged this money—— A. I said they had their entries in the books showing that.

Q. Who did that? A. The former bookkeeper.

Q. Point out one of the entries where merchandise is charged to his account. A. (Witness steps down from the witness stand and examines a book.)

Q. Did Mr. Fish, during the time you have been with the company and during the time he was up there, ever get any cash from the company in excess of his salary, for which you put a cash slip in the drawer? A. I think not.

Q. Now, you remember this cash slip which was introduced in evidence with the charge of $20 to Mr. Harrison, the Dye cash slip? A. Yes, sir.

Q. From the drawer? A. Yes, sir.

Q. Now, that bore the date of October 25, 1909, didn't it? A. I don't remember the date.

Q. It was dated October 25, 1909, and it showed a charge to Mr. Harrison's account of $20, didn't it? A. Yes, sir.

Q. You remember that? A. Yes, sir.

Q. Now, did you make the entries in the ledger of November 30, 1909? A. I probably did.

Q. You were the only one keeping the ledger at that time? A. Yes, sir.

Q. At that ttime did you charge Mr. Harrison's personal account with $266.12, do you remember? A. I think I did.

Mr. Harrison: It seems to me, that under the Court's previous ruling, this is going into the merits of the account rather than as to the right. However, I withdraw the objection.

Mr. Maxson: I understood that this witness was produced here for further cross examination.

Mr. Harrison: He was not.

Mr. Maxson: I permitted him to go ahead and pursue his defence here after he had rested with this witness; and now he takes the position that we ought not to be permitted to have a further cross examination.

Mr. Harrison: Go ahead, and cross examine him; we don't care. I told the Court at the opening that I desired to further examine this witness—practically redirect. Now, I take it that this would be recross examination, which would merely cover the redirect portion intro-

duced; but we have no objection, if you want to go into all the business of milling——

Q. Do you recall making an entry of Mr. Harrison's personal account, which purported to represent the cash slips in the drawer at the time, for the sum of $266.12 on November 30, 1909? A. I wrote the item, yes, sir.

Q. And that represented, or was said to have represented, all the cash slips up to that time? A. Not necessarily all of them, no, sir.

Q. You made the entry cash slips in the drawer to Mr. Harrison's account at a date subsequent to the time when this cash slip was put in, and carried this in the drawer, and did not include it in the entry in the ledger? A. Possibly.

Redirect examination by Mr. Harrison:

Q. Why did you not include the cash slip referred to in that gross charge of $266.00? A. I understood from Mr. Harrison that it was a special slip and he did not want it charged up to his account.

Q. Did it still stand as a debit against A. G. Harrison? A. Yes, sir.

Mr. Maxson: May we not consent that Mr. Harrison tell his story on the witness stand as he pleases, without being interrogated?

Mr. Harrison: I would feel better if I had counsel examining me; I think it would be more regular.

Mr. Maxson: I want to have it appear on the record that we consent that Mr. Harrison go on and tell his story in narrative form, without being interrogated by counsel for the purpose of expediting this case.

The Court: Well, proceed with your case.

Mr. Maxson: What position are we in? The

defence has not rested, and we would like to put in our rebuttal and wind up this case today.

The Court: Well, why not put it in?

Mr. Harrison: It will take me, probably, fifteen minutes to testify.

Mr. Maxson: Does counsel object to telling me what the purpose of his testimony is, in order that I may know whether I shall have rebuttal or not?

20 The Court: You can put in your rebuttal as fas as you can today, and close it, and if there is anything further that you require, I shall allow you to do it, after you have heard Mr. Harrison's testimony.

Mr. Maxson: I won't know what I am required to meet at this time, unless Mr. Harrison informs me what the testimony is about.

The Court: You will hear Mr. Harrison's testimony itself.

Mr. Maxson: Then I won't have my witnesses in court, and I shall have to produce

30 them at another day.

The Court: What else can you do?

Mr. Maxson: Doesn't your Honor think I am entitled to know at this time what this testimony is about, the general subject of it? I have no idea what the purpose of this testimony is. If Mr. Harrison goes on the witness stand on some motion day and testifies and I feel that it is proper in my client's interest to produce rebuttal, then I shall have to ask your Honor to give me another day in which to do it.

40 The Court: That is the only way I can see that I can do it. I don't want to put down a

day now. How long is Mr. McCarter to be engaged?

Mr. Harrison: He said he expected to be free on the week of the 27th of this month; he would certainly be disengaged any time after the 7th of November.

The Court: Well, call your witnesses in rebuttal and see how far you can get.

REBUTTAL.

FREDERICK K. FISH, recalled in rebuttal, testified as follows:

Direct examination by Mr. Maxson:

Q. When did you first see the minute book, Mr. Fish, Complainant's Exhibit 1? A. Along the latter part of October, or the fore part of November, 1909.

Q. For what did you have the book at that time? A. To ascertain just exactly the amount that was voted off to Mr. Harrison.

Mr. Harrison: I object, if the Court please, to this line of testimony, on the ground that it has been previously covered in the direct examination of Mr. Fish.

The Court: Has it been covered?

Mr. Maxson: No.

Mr. Harrison: See page 17 of that Book 1. (Mr. Harrison reading.)

Mr. Harrison: Don't take this down, Mr. Stenographer.

Mr. Maxson: All right.

Q. Now, after November 18, 1905, when you consented that Mr. Harrison cross off an overdraft of

$4,552.63, or whenever the date was—it was some time previous I understand—after that time, did you ever attend any meeting where a resolution was offered to cross off any further overdraft? A. Never.

Mr. Harrison: I don't have time to object; I think this witness is sufficiently familiar with the practice not to slip in answers. I make the objection on the ground that this has already been covered in the direct examination; the exact page in the testimony I cannot say.

Mr. Maxson: Even if it has, I think, to expedite this case that I should be permitted to ask these general questions.

Mr. Harrison: On page 19 of Book 1 of testimony, taken on July 31, 1912, by solicitor for complainant: "Ques. Did you ever participate in any meeting?" (Reading.) And then he goes on and refers to other meetings where he say he certainly was not there; it is mere repetition.

The Court: It seems to be.

Q. Did you ever sign any check as an officer of the Harrison Milling Company, for any money for Mr. A. Gould Harrison in addition to his salary? A. No, sir.

Q. Did you ever receive, up to the time when you examined the minute book in 1909, and the time when Mr. Harrison told you that he had overdrawn to a large amount in addition to the $4,552.00 which you crossed off, did you ever receive any statement from Mr. Harrison, or any bookkeeper of the Harrison Milling Company or anyone else, which showed an overdraft by Mr. A. Gould Harrison?

Mr. Harrison: I would like to ask for the reading of that question.

Q. (Question read.)

Mr. Harrison: I object to the question on the ground, first, that it has been sufficiently covered by the direct examination of this witness.

The Witness: May I change my answer to that?

The Court: Isn't it possible to refer to the testimony and close this matter up, shorten it, without going over these things again?

Mr. Maxson: I have only about a dozen questions to ask.

The Court: Then I will rule on them afterwards.

Mr. Harrison: But, if the Court please, if he opens all that again, I shall have to go in and meet it again; take these checks to which he has already made a reference; he says he never signed a check——

Mr. Maxson: I will withdraw the question.

The Court: Now, Mr. Harrison, you have stated that you would have to go over it again; it is simply reiteration; it is only reiteration of a fact; it cannot injure your case at all.

Mr. Harrison: My second objection was that it was not proper redirect testimony.

The Court: Go ahead with this dozen questions.

Q. Between the time in 1905 when you agreed to strike off $4,552.00 as an overdraft from Mr. A. Gould Harrison, and the time when he told you in 1909 that he had overdrawn in a further large sum of money, did you ever receive from him, or from anybody else, in connection with the Harrison Mill-

ing Company, a statement of his overdrafts? A. Only the statement that Mr. Tichenor gave me when I asked him how his account stood.

Q. That was after Mr. Harrison had told you that he was overdrawn? A. Yes, sir.

Q. Did you ever direct anybody to antedate any of the minutes in the minute book? A. No, sir, never.

Q. You, in your own handwriting, entered a minute on September 30, 1909? A. Yes, sir.

Q. Was that entered at someone's direction? A. That was entered at my former attorney's direction.

Q. Did you have any discussion with Mr. A. Gould Harrison about making a loan to the Harrison Milling Company? A. Never.

Mr. Harrison: I think there is no question of this having been covered by the direct examination.

The Court: If it has, we will take note of it.

Q. Did Mr. A. Gould Harrison ever inform you at any time that he had loaned to the Harrison Milling Company $2,000? A. Never.

Q. Did you ever have a book shown to you by anyone, either by Mr. Tichenor or by Mr. Harrison, and was it told to you at the time the book was shown to you, that it was the trial balance of the Harrison Milling Company? A. Not the trial balance.

Q. Did you perform any services for the Harrison Milling Company during the time you were in Montclair, and while you were drawing $3,000 a year? A. I bought all the grain and financed it.

Q. Did Mr. A. Gould Harrison ever read to you a draft of any minute before it was entered in the minute book? A. Never.

Q. Where were you in the summer of 1908? A. Up in Summit, New York State.

Q. When was that? A. In 1908; I went up in the middle of June and came back about the 28th of September.

Q. Where were you in the summer of 1909? A. At the same place.

Q. And during that period? A. From June 5th up to September 27th or 28th.

Q. And during either one of those times while you were up in the country, did you come down to New York? A. No, sir.

Q. Remained there continuously? A. With the exception of once I went to register, going by the way of Albany and returning by the way of Albany back into the mountains again.

Mr. Harrison: I would like to make a formal motion to strike all this testimony out, first, on the ground that it is not proper rebuttal; and having been gone over before in Book 1 of the previous testimony, by reference to which I can show your Honor——

Mr. Maxson: Then while this motion is going on, I would like to move to strike out all Mr. Tichenor's testimony on the same ground, that it was not proper redirect, because I thought we might have everything on the record for the Court's information.

The Court: For the present the Court will deny both motions.

Cross examination by Mr. Harrison:

Q. You testified, Mr. Fish, that the first time you ever saw "Exhibit C 1" for complainant, was in October or November, 1909; did I understand you correctly? A. Yes, sir.

Q. Were you ever present at any meetings of the Harrison Milling Company directors when that book was present? A. Not to my knowledge.

Q. Don't you recall that at every one of those meetings in Montclair, that that book was produced? A. No, sir.

Q. Will you positively say that it was not? A. I will say that it was not; that generally a pad was brought for them, and whatever was done at that meeting was put on to the pad.

Q. Do you mean to say that no reference was made at any of these meetings to the minutes previously held? A. I do.

Q. Do you belong to other corporations? A. No, sir.

Q. It is the practice of corporations to read and approve minutes of previous meetings, don't you know that?

Mr. Maxson: Objected to.

The Court: Objection sustained.

Q. Did you have access to the safe of the Harrison Milling Company during your connection with it? A. Yes, sir.

Q. Did you ever see this book in the safe of the Harrison Milling Company? A. Never, until Mr. Tichenor showed it to me.

Q. And where was it then? A. I don't know; he brought it to me.

Q. Did you see him remove it from the safe? A. I don't remember.

Q. Where were you? A. In the office.

Q. What portion of the office? A. Away back.

Q. And what was the occasion of your asking for it? A. It is all in the testimony.

Q Had you been told there was a minute book? A. No, sir.

Q. Did you ever have any reason to inquire

whether or not there was one? A. Nothing previous to that.

Q. Didn't it seem unusual to you that these meetings of the corporation were held and no minutes taken?

Mr. Maxson: Objected to.

The Court: Objection sustained.

Q. Why didn't you ask for the minute book? A. When?

Q. Prior to November, 1909? A. I did not have any occasion for it.

Q. How many meetings of the Board of Directors of the Harrison Milling Company did you attend from 1903 to 1909? A. I could not tell you.

Q. You attended a number of them? A. Several, yes.

Q. Where were those meetings held? A. The meetings were always held in the mill.

Q. In the office of the mill? A. Yes, sir.

Q. At any of these meetings did you call for the reading of the minutes? A. Never.

Q. Were any minutes ever read? A. Never.

Q. When you approved of this resolution of November 18, 1905, did you make any inquiry as to whether or not that resolution had been put in form? A. No, sir.

Q. Were you not interested in it? A. To what I did, yes, sir.

Q. Did you ever ascertain whether or not that $4,552.68 had been charged on the ledger? A. No, sir.

Q. You manifested no interest in it whatever? A. None whatever.

Q. And did you then suppose a minute had been properly drawn, crossing it off? A. I never supposed anything about it.

Q. That you had just agreed with A. Gould Harrison that that should be crossed off? A. Yes, sir.

Q. And no reference of any kind was made to the preparation of a minute? A. It never entered my mind.

Q. Didn't you know at that time, that in order that it be a valid, corporate act, that it was necessary that a resolution be passed?

Mr. Maxson: I object.

A. I know nothing whatever of corporation law.

Q. Did you ask for the submission of the minute book prior to the writing in of the minute of September 30, 1909? A. In the early part of October or the fore part of November.

Q. And that was subsequent to the time you wrote in that minute? A. That was before I wrote in this minute.

Q. Why did you think it was necessary to write that minute in? A. On the advice of my lawyer.

Q. So, up to that time you did not know it was necessary to make any corporate record of any kind? A. None whatever; I never gave it a thought.

Q. You have said in your direct examination that you never signed any check for A. Gould Harrison or for his account, subsequent to the meeting of November 18, 1905?

Mr. Maxson: Just a minute; that is a misstatement of the testimony.

Q. (Question withdrawn). I show you a check for $115.00, dated November 6, 1909, marked "Exhibit L. A. 2," and I ask you why that check was signed? A. That check originally was signed, then the name was entered in.

Q. Did you sign it in blank? A. Yes, sir.

Q. Did you ever sign other checks in blank? A. Yes, sir, very often.

By the Court:

Q. So, then, you don't know whether you signed any checks for overdrafts or not? A. Not knowing them to be overdrafts.

Further cross:

Q. You signed numerous checks in blank? A. Several times, on two different occasions, I signed 20 checks in blank. They were signed by A. Gould Harrison as treasurer.

Q. On what two occasions did you sign a number of checks in blank? A. I had three or four minutes to take a train once, and I saw the checks were signed by A. Gould Harrison, and I simply certified them.

Q. And when was that done; fix the date of the year; was it in 1908? A. No, sir, it was in 1909.

Q. Were both of these occasions in 1909? A. Yes, sir.

Q. Can you fix the time in 1909 when you signed 30 these numbers of checks? A. Along in November or December; I cannot remember exactly the time.

Q. Were both of these occasions in November or December? A. I think so.

Q. How near together in point of time were these two occasions? A. I should think within probably two or three weeks.

Q. And how many checks did you sign on the first occosion? A. I could not remember—several.

Q. Can you fix the number? A. I should think, offhand, about six or seven.

Q. Referring again to "Exhibit L. A. 2"—— A. 40 Which is that?

Q. You say that when you signed that check, there was nothing on the check except the signature of A. Gould Harrison? A. Yes, sir.

Q. That the amount was not filled in? That neither the amount nor the name were filled in? A. Exactly; now, I am speaking now; I would like to ask one question.

Q. You answer my question. A. That check was not filled in when I signed it.

Q. What was there on that check, if anything, when you signed it?

Mr. Maxson: I object to the question; it has already been answered three or four times; he says there was nothing on the check.

A. This is the check with the erasure on the stub.

Q. Did you have any conversation with A. Gould Harrison at the time you signed this check? A. No, sir.

Q. Did you have any reference made at that time to a certain number of the bills charged against him? A. Not against him, but against the Harrison Milling Company.

Q. Did you keep a memorandum of those bills? A. No, sir.

Q. Did you make a total of them? A. No, sir.

Q. Does this check in any way have reference to those bills? A. I cannot tell you; it was in the same column with those bills that you speak of, that the checks were drawn for.

Q. How many checks did you sign at that time? A. I could not remember.

Q. Were all of those checks in blank? A. I would not say.

Q. Would you say there was a dozen or fifteen checks? A. I don't remember.

Q. Were all the checks which you signed in November signed in blank? A. I would not say that; there were checks made out that were filled in, that I signed.

Q. So that your best recollection is, that some of these checks were filled in and other checks were blank? A. I know they were.

Q. Did you make any inquiry as to the purpose for which these blank checks were to be used? A. No, sir.

Q. Didn't you deem it unusual that some of the checks were filled in and others were not? A. I don't think—as my memory serves me—at the time that I signed those checks in blank, that there was none of them filled out.

Q. Then you wish to correct your previous statement that some of them were filled in? A. I said at times some of them were filled in, but I had reference to this particular time.

Q. We are now referring to the particular time when this check "Exhibit L. A. 2" was signed by you? A. As my memory serves me, at that time all the checks were in blank.

Q. And how many checks were there? A. I don't remember.

Q. Will you say there were a dozen? A. I would not say.

Q. Will you say there were more than a dozen? A. I don't know.

Q. There may have been 100? A. Oh, no.

Q. There may have been 50? A. Oh, no. I think I can tell a little better if I knew how many checks there were on one page of the check book.

Q. Would you say there were more than six? A. I would not say; I would say from six to ten.

Q. I show you a bundle of eighteen checks, dated November 5 and November 6, 1909, and I ask you

if those were the checks to which you refer as having been signed by you in blank on that day?

Mr. Maxson: On which day?

Mr. Harrison: On the day to which the witness has referred.

The Court: I suppose you refer now to the date of this check that was signed in blank?

Mr. Harrison: Yes, sir.

A. I remember nothing whatever about these checks, anything further than I know that is my signature on there.

Q. So you don't recall whether any of those checks which you have before you were signed at the same time that you signed "Exhibit L. A. 2"? A. I cannot remember anything about it, anything more than I have testified to on several occasions —I signed checks that had not been filled in.

Q. But coming down to this occasion, to the signing—on which this check "Exhibit L. A. 2" was signed, which is the $115 check; when you say you may have signed almost any number of checks, you now say you don't know whether you signed them or not? A. Simply because I see by the dates here —that refreshes my memory in a measure—it shows that there could not have been over three checks there, according to the date—but as regards the $115, I will state right here that, even had I signed that check, and if it were to A. Gould Harrison, it would not be in the nature of an overdraft, I would suppose it was for salary or something equivalent; I don't know what. I would suppose it was for salary, or that he wanted to borrow some money for his own use for a few days.

Q. So that if he had wanted to borrow money for his own use for a few days, it then met with your

entire approval? A. If he had come to me and said that he wanted to anticipate on his salary, I certainly would have signed the check for him.

Q. When you speak of borrowing money, do you limit that borrowing to anticipation of salary? A. I would.

Q. So that, when you mean "borrow" you don't mean to take the money out of the concern for the purpose of returning it? A. When I use the word "borrow" I mean that it was in anticipation of his salary.

Q. So then, you may have signed that check on or about the day of its date, and that check may have been filled in as it now appears? A. No, sir.

Q. Why, then, are you so positive about that check, and you cannot be positive about any of these other checks? A. Simply because I know I never signed a check for A. Gould Harrison.

Q. So it is merely by reason of the fact that you know the name of A. Gould Harrison never appeared on a check which you signed? A. That is the reason.

Q. Who gave you that check to sign? A. Mr. Tichenor brought the book up and put it in front of me to be signed.

Q. Did he say anything at that time? A. No, sir.

Q. He just submitted the book to you? A. Yes, sir.

Q. Did he direct you as to how many checks he needed? A. No, sir; the checks were signed by A. Gould Harrison, and when they were presented to me for signature I naturally supposed that they were needed in the business, and that is the reason I signed them.

Q. Was the occasion when you signed "Exhibit L. A. 2" the first occasion, the first of the two oc-

cations to which you have previously referred when you signed checks in blank? A. I think so.

Q. When was this second occasion to which you have referred? A. It was previous to that, I think, but I won't be certain.

Q. Can you tell me how many checks you then signed in blank? A. No, sir.

Q. Can you tell me the circumstances under which those checks were presented to you for signature? A. No, sir, I cannot.

Q. I show you check, "J. Marshall and Ball," purporting to be signed by you, dated November 5, 1909, and ask you if you have any recollection about the signing of that check? A. Very well, indeed; my recollection is that I gave the party that had charge of the cash drawer $22 and then had a Harrison Milling Company check drawn.

Q. Who got the $22.00? A. There is a bare possibility, that, instead of giving the $22.00, that I may have had that deducted from my salary account.

Q. You got the $22.00 in some way? A. I got the equivalent of it, yes, sir.

Q. Why, then, was that check drawn to the order of J. Marshall and Ball? A. That is to whom the money was owing.

Q. By whom? A. By myself, personally.

Q. You are positive about that? A. I think so; I don't know that I could swear to that.

Q. But you got the money for it? A. Certainly, I got the $22.

Q. That bill may have been owing, not by you, but by the Harrison Milling Company, or A. Gould Harrison? A. Yes, it might; it might not have been owed by myself personally.

Q. Then how do you explain the taking of the money by you?

Mr. Maxson: This is totally immaterial and improper cross examination. I object to it because it is not proper cross examination at this time; that is the principal objection.

A. I cannot remember these small checks.

The Court: I will allow it to stand. Proceed, Mr. Harrison.

Q. You knew that A. Gould Harrison purchased this stock from the Beyeas, didn't you? A. I knew he said so.

Mr. Maxson: I object to that as being improper cross examination.

The Court: I don't think it is proper cross examination; what is the object of this question?

Mr. Harrison: He answered on the direct examination, that Harrison denied that A. Gould Harrison told him of the loan of $2,000; now, this question was merely to lead up to that assertion that he made.

The Court: This is recross examination; you may answer that question.

Q. Did not A. Gould Harrison tell you the method of his purchase? A. Never.

Q. Didn't he tell you out at his home in the fall of 1906, that he had sold a house? A. He did not.

Q. And that the proceeds of that sale had been put in the Harrison Milling Company? A. He did not.

Q. When did you first learn that he was negotiating for the purchase of this stock? A. Some time before he told me that he had purchased it; I don't remember how long.

Q. How many conversations did you have with

him concerning these negotiations, or concerning the purchase? A. Two or three times.

Q. And when were those conversations had? A. Previous to the time that he bought the stock; I cannot remember how long.

Q. Do you remember when he bought the stock? A. No, sir; I cannot remember when he bought the stock.

Q. Do you know how long these negotiations were pending? A. I don't know.

Q. It may have been a month or it may have been a year? A. Yes, sir.

Q. But you are positive that you had two or three conversations with him while the negotiations were pending? A. No, sir, not while the negotiations were pending; I had one or two conversations with him regarding the stock.

Q. Didn't you know that negotiations were pending for the purchase of 19 shares of stock? A. Not until he told me that he had purchased it.

Q. Where did he tell you that? A. I think he told it to me over the telephone.

Q. Didn't you have some arrangement with him, whereby the excess of a certain amount might be charged off to merchandise? A. Beyond the $100 a share?

Q. Yes. A. Yes, sir.

Q. Was not that arrangement made with him before the stock was purchased? A. It was not.

Q. Why do you speak so positively with respect to this? A. Because I remember.

Mr. Maxson: I object to the form of the question.

The Court: Objection sustained; put it in another form.

Q. So that you say that the first intimation that you had of the acquisition of this stock was after

the actual transfer of the purchase money? A. I could not tell about that.

Q. Who told you the stock was purchased? A. He did; he said he had purchased the stock.

Q. Did he say he had paid the money? A. Nothing was said about the money.

Q. Did you ask him how much it cost him? A. He told me how much it cost him.

Q. Didn't he tell you sometime before that, that he was negotiating for the purchase of this stock? A. No, sir.

Q. Did you know who owned the stock? A. I knew that it was his brother-in-law and his sister-in-law, if my memory serves me.

Q. Do you recall the occasion when you and Mr. Tichenor and A. Gould Harrison examined the trial balance book before you? A. I do not.

Q. Have you ever seen that book? A. I don't know whether it was that book or not.

Q. I refer to "Exhibit H. Z. 3?" A. I don't remember the book at all.

Q. Will you say that you never examined that book? A. I will say that never, to my knowledge, have I examined this book.

Q. So, when you say to your knowledge, are we to gather that you may have examined it?

Mr. Maxson: Objected to.

The Court: Objection overruled.

Mr. Maxson: I object to the form of the question.

The Court: I will rule it out as objectionable in form, but I will allow counsel to proceed on the examination of this book.

Q. Will you state the first time that you saw "Exhibit H. Z. 3," which is a book headed "Trial Balance," and now handed to you?

Mr. Maxson: I object to the form of that question, because the witness has testified he never saw the book.

By the Court:

Q. Did you ever see this book now in your hands? A. May I answer that question in my own way?

Q. Certainly, you may answer it in your own way; have you ever seen this book? A. I don't know, sir.

Further cross:

Q. Do you ever remember examining a book which purported to contain an abstract of the ledger account of the Harrison Milling Company? A. I do not.

Q. I call your attention to certain marginal references and comments made by Mr. Tichenor, and ask you if you have ever seen those marginal references? A. I have never seen the book.

Q. Will you say that you never examined that book or a similar book, with Mr. A. Gould Harrison or Mr. Tichenor? A. I asked Mr. Tichenor at one time to give me a statement of the amount of money that was owed to the Harrison Milling Company that had gone over six months; he brought me a book, and whether he read off the amounts, or whether I took off the amounts, I don't remember; now, it may have been a book similar to that, but as to its being that identical book, I could not swear to it.

Q. So you don't know whether it was that book or not? A. No, sir.

By the Court:

Q. Did you ever see the trial balance book of

this corporation, that you recall? A. Never—not knowing it to be a trial balance book.

Further cross:

Q. Did you ever examine, with Mr. Harrison and Mr. Tichenor, in October or November, 1909, a book which showed the outstanding accounts taken from the ledger of the Harrison Milling Company? A. Mr. Harrison and Mr. Tichenor and I never examined books together; whatever was done with the books was between Mr. Tichenor and myself; Mr. Harrison had nothing whatever to do with it.

Q. Did you, for a period running from two to four days, at odd times during those days, examine any books in October or November, 1909—examine any books which tended to show the outstanding quick assets of the Harrison Milling Company? A. No, sir.

Q. You were familiar, were you not, with the accounts of the Harrison Milling Company? A. Only as it was given to me by Mr. Tichenor; I always asked him to give me the figures.

Q. There were some cases when the books were examined? A. Not to my knowledge.

Q. You said "He submitted statements to me as a rule?" A. As a rule—I mean, when I asked him for statements, that he would draw them up on the slip and hand them to me. Mr. Maxson has one in his possession now, that I gave him the other day.

Q. Is this one of the statements prepared by Mr. Tichenor? A. You have another statement there that I gave you the other day. This is a statement, as my memory serves me, giving just exactly the account of A. Gould Harrison; as my memory serves me, that is what this is.

Q. I ask you again, was all your information obtained from statements submitted by Mr. Tichenor? A. Yes, sir.

Q. Did you ever examine a single book of the Harrison Milling Company? A. Yes, sir, the sales book.

Q. Did you examine any book other than the sales book? A. Never; the sales book I examined very often.

Q. Only the sales book? A. Only the sales book.

Q. But you were quite familiar with the sales book? A. Very.

Q. But you limited your examination entirely to the sales book? A. Entirely to the sales book.

Q. Why? A. Because that sales book was intelligent to me; your ledger and journal I would know nothing about.

Q. How do you know that you could not tell? A. Because I am not a bookkeeper.

Q. Had you looked at them to confirm that fact? A. No, sir.

Q. So you knew those books were not intelligent to you, without looking at them? A. I know that any books that are kept would be unintelligible to me, yes, sir.

Q. You mean to say, that you cannot understand the meaning of an ordinary statement in a ledger? A. I know nothing of bookkeeping, and I never examined the books of the Harrison Milling Company, with the exception of the sales book.

Q. You understood the statement made by Mr. Tichenor? A. No, sir, I never have until this day.

Q. And you are a business man? A. Why do you ask such a silly question?

Q. Are you a business man?

The Court: This witness was absolutely improper in his answer. Now, Mr. Fish, you must answer the questions.

A. Oh, yes.

Mr. Maxson: I object to that question—"Are you a business man."

The Court: The question is improper.

Q. Do you tell me, Mr. Fish, that during the period beginning in 1903,—the existence of your connection with the Harrison Milling Company—that you never examined any book or books of the corporation except the sales book? A. I certainly do.

Q. And do you mean to tell me that your failure to make such examination was due to the fact that you cannot understand the ordinary rules of bookkeeping?

Mr. Maxson: I object to the form of the question, as calling for a conclusion of the witness.

The Court: Objection overruled.

Q. How long have you been in business? A. 30 years.

Q. That is a business of considerable amount?

Mr. Maxson: I object to this line of examination as not proper cross examination.

The Court: The objection is overruled,—he has been in business how many years?

The Witness: About 30 years, your Honor.

Q. What business have you been in? A. In the wholesale grain business.

Q. That involves the keeping of books? A. Not in double entry; we simply keep a memorandum of each car.

Q. You had a single entry system? A. I don't know what you call it.

Q. But you understood your own business? A. Yes, sir, I understood that.

Q. You testified you bought all the grain for the Harrison Milling Company and financed the corporation? A. When?

Q. When you said you bought all the grain and financed the Harrison Milling Company, to what period did you refer? A. To the time I was in Montclair.

Q. That is between what dates? A. The time I went up there in October, 1909, until, I think, early in 1910.

Q. By buying the grain, do you mean you made all the purchases of the corporation? A. The bulk of the purchases were bought by me.

Q. And when you mean you financed the corporation, do you mean that you advanced the money? A. Yes, sir, that the drafts were made from my office.

Q. Then, would that not rather be an advance of credit? A. It would be the giving the Harrison Milling Company the 30 days, until the arrival of the car.

Q. And upon the expiration of that 30-day draft, that draft would be met by the Harrison Milling Company? A. It should be.

Q. Wasn't it met in all cases? A. In all cases but one, when a note was protested.

Q. Did you keep any record of these grain purchases and the financial arrangement made for the purchase of this grain? A. It was kept in the Harrison Milling Company's office.

Q. Did you make any inquiry to ascertain that this was properly kept? A. I kept that myself on a slip that Tichenor gave me.

Q. What was that note? A. The note was a note that we made out and got credit at the Montclair Bank for $2,000 or $2,500; I don't remember which.

Q. All the drafts were paid? A. Yes, sir, but I had by name on the back of this note when Mr. Harrison let it go to protest.

Q. Did you, by reason of that protest, lose any money, or was your credit in any way impaired?

(Question withdrawn).

Q. Was that note paid by the Harrison Milling Company? A. Later on, yes, sir.

Q. I show you minute of November 18, 1905, on page 28 of "Exhibit C 1" for the complainant, and I ask you when you first saw that minute as it there appears? A. Shortly after I first saw the book in October or November.

Q. Was the minute, as it there appears, shown to you for approval, upon a typewritten sheet? A. It was not.

Q. Did you make any inquiry after the passage of that resolution, as to whether it had been put in the minute book? A. Never. I think you asked me all these questions before.

Mr. Maxson: I only want to shorten it up as much as possible.

Q. When you wrote in the minute of September 30, 1909, which minute increased your salary and that of the treasurer to the sum of $3,000, did you then make an examination of the minute book? A. I saw the minute book long before that; this minute was not written in this book until along in February or March, of 1910; I saw the minute book in the forepart of November or the latter part of October.

Q. Why did you date the minute that way? A. My impression is, that that is the date on which Mr. Harrison and I agreed that we should each draw this salary of $250.00 per month.

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Q. So that you did not write that minute in until about February, 1910? A. February or March—that is the minute I put in by advice of counsel.

Q. Had you previously drawn your salary at the rate specified in that minute? A. Yes, sir, I drew it all through October and up to that time.

Q. I call your attention to the minute of October 21, 1909, and ask you if you recall directing the insertion of that minute by the bookkeeper, Mr. Tichenor? A. Yes, sir, very well; I asked Mr. Tichenor to enter it; that was done by the advice of the counsel, too.

Q. And when did you ask Mr. Tichenor to enter it? A. I think along about February or March; about the time that this one was put in; in fact, I think it was put in the next day, if I remember right.

Q. You say the minute of September 30, 1909, was given that date, because that was the time at which you and A. Gould Harrison had agreed on that increase of salary? A. Yes, sir.

Q. How did you arrive at the date of October 21, 1909, for the date of the minute appearing on the top of page 31? A. I think you will find, if you refer to a letter written to the bank, that that was the date in which the letter was sent to the bank.

RECESS TO 2 P. M.

AFTER RECESS.

Mr. Maxson: I ask that this statement referred to by the witness, Frederick A. Fish, as being a statement prepared for him by Mr. Tichenor, be marked for identification.

Mr. Harrison: I think this statement merely showing the amount of debits, should have gone in evidence on the Complainant's direct case.

The Court: They could not find it.

Mr. Maxson: I am merely having it marked for identification.

The Court: It has been referred to by the witness, and the witness said he prepared certain statements for him. Mr. Fish said, Tichenor prepared certain statements for him, and this was one of the statements, I understand; it is to be marked for identification.

Marked "Exhibit D.A.Z. 1 for identification."

Marked "Exhibit D.A.Z. 2 for identification."

Q. When you refer to the letter which was sent to the bank, what do you mean, Mr. Fish? A. I had reference to this meeting where we notified the bank that—which is the one—oh, I had reference to this minute.

Q. That minute refers to a new method for the signature of checks, notes and drafts, doesn't it? A. Yes, sir.

Q. And is that your recollection, that you sent a record of that minute to the bank? A. I am quite positive that we did, yes, sir.

Q. Do you remember to whom that letter was addressed? A. It was addressed to the Bank of Montclair.

Q. It may have been addressed to Mr. Benjamin Graham, President? A. Yes, sir, or it may have been addressed to the cashier, or possibly to the Bank of Montclair; I don't remember.

Q. Did you keep a copy of the letter? A. I don't remember whether I did or not.

Q. At or about that time, did you send more than one letter to the bank? A. Yes, I am quite positive we did, about that time or later on, I forget which.

Q. Did you ever write a letter to the bank under date of December 3, 1909, as follows: "On account of the increase of the Harrison Milling Company's business, we are desirous that the Montclair Bank should discount a four months' renewal note from time to time, as we may so desire, for from six to eight thousand dollars; we feel that their financial condition is of such a nature as to warrant this consideration from your hands?" A. Yes, sir, I think there was a letter of that kind sent to the bank.

Q. Is that the letter to which you refer? A. Yes, sir, that is the letter to which I refer; I don't know whether that was the date or not; I don't remember that.

Q. You stated this morning that October 21, 1909, was set forth at the heading of that minute, because that was the date on which you notified the bank, didn't you? A. Notified the bank of what?

Q. Either by sending the letter to which I have just referred, or by the sending of some other letter? A. Yes, I testified that I thought that was the date that the letter was sent.

Q. Do you know whether or not December 3, 1909, is the correct date of the time of your notifying the bank? A. I do not, I don't remember.

Mr. Maxson: That is hardly fair; that letter refers to an entirely different matter from the minute.

The Court: Don't let us prolong this thing too much; hasten it along a little bit.

Q. Do I understand you to say, that the minute of November 18, 1905, was merely an agreement between you and the defendant Harrison, and that

you did not know until November, 1909, that it has been put in the form of a resolution? A. About that; I don't remember the date.

Q. What then, did you mean, when you testified on July 31, 1912, as follows (Reading): "Q. In the meantime, you were drawing a salary of $25.00 a week? A. Yes, sir. Q. For what service was that salary? A. It was voted to me when I voted Mr. Harrison $40.00 a week." A. Yes,—what did I mean—I meant that in lieu of the fact that I had voted Harrison $40.00 a week, he, in return, was to vote me $100.00 a month, on the ground that this was a portion of the profits from the business.

Q. So, when you used the term "voted" in these questions and answers which I have just given to you, you did not use it in a technical sense, as referring to a resolution?

Mr. Maxson: I object to the form of the question.

By the Court:

Q. In what sense did you use the word "voting?" A. (No answer).

Further cross:

Q. When you used the term "voted" in the questions and answers which I have just given to you, in what sense did you use the term? A. Why, in reference to the minute of 1908.

Q. Look at the dates, Mr. Fish. A. 1905—that was the day that we voted the $40.00 and the $25.00.

Q. And when you were further asked (reading): "Q. It was on that occasion that the resolution giving you a salary was passed? A. Yes, sir"; in what sense did you use the term "resolution"? A. As to what took place at this meeting.

Q. So, at that time when you used the word "voted," and the term "resolution," you referred to action taken at a corporate meeting? A. Yes, sir, at this meeting.

Q. So that that determination between you and the defendant Harrison was then something more than a mere understanding between you? A. I don't know that it was anything more than an understanding; it was simply carrying out the intentions of the minute.

Q. Which minute do I understand you to say was adopted at a regular meeting of the corporation? A. This meeting was held at Mr. Harrison's house, not at the office.

Q. But that was a meeting, wasn't it, at which the directors were present? A. Yes, sir, they were all there; Mrs. Harrison was there.

Q. And the resolution was passed in due form? A. Not in accordance with this minute; there is lots in this minute never took place at that meeting.

Q. But, so far as the agreement, as you termed it, for the payment of your salary of $100.00 a month, and the payment of the A. G. Harrison salary at $160.00 a month—that is satisfactory, isn't it? A. Yes, sir, that is all right.

Q. But in other respects the minute is informal and incorrect? A. Not in all respects; this is the minute in which we voted off $4,552.63; that was in accordance with what was done.

Q. In what respect, then, does that minute not incorporate and properly show the understanding between you and Mr. Harrison? A. In regard to the rate of $760.00—that never was mentioned in the meeting at all. Outside of that, I don't know that I see anything out of the way; yes, the divi-

dend of 5 per cent was voted there at that meeting, but that 5 per cent I never got.

Q. So that your recollection of all the items of that particular minute is very clear at this time, Mr. Fish? A. Yes.

Q. That minute provides, doesn't it, that your salary at the rate of $1,200 a year shall begin in August, 1905, and end in August, 1906, doesn't it? A. I don't think there was anything said about how long it was to continue.

Q. (Question read.) A. There was nothing said as regards how long that should run; it ran for four or five years; we never, to my memory, ever had another meeting where we voted each other $40.00 a week and $100.00 a month.

Q. But you have drawn in salary at the rate of $1,200 a year from August, 1905, to October, 1909? A. That is right.

Redirect examination by Mr. Maxson:

Q. At the time Mr. Tichenor gave you that paper marked for identification, what sort of an account did you ask him for? A. I asked him to give me a statement of A. G. Harrison's account, and he handed me that.

Mr. Maxson: I offer this in evidence.

Marked "Exhibit D. A. Z. 1"; "Exhibit D. A. Z. 2."

Recross examination by Mr. Harrison:

Q. Didn't you ask Mr. Tichenor to give you a statement of the debit charges against the A. G. Harrison account? A. I asked him for a statement of Mr. Harrison's personal account.

Q. You knew this statement did not contain any of the credits appearing on the books of the corpo-

ration, didn't you? A. I knew nothing whatever about it.

Q. Didn't you subsequently go over this statement with Mr. Fish and Mr. Tichenor in the ledger and cash book of the corporation? A. I certainly did not.

Q. You received other statements, didn't you? A. Regarding the A. G. Harrison account?

Q. Yes. A. Not to my memory.

Q. Didn't you receive two or three statements from Mr. Tichenor which showed in addition to the charges the credit entries? A. No, sir.

Q. And didn't you go over those other statements with Mr. Tichenor by reference to the various books of account of the corporation? A. I certainly did not.

LAMBERT H. FISH, sworn in rebuttal, testified as follows:

Direct examination by Mr. Maxson:

Q. What is your business? A. The grain business.

Q. You are associated with Frederick K. Fish, the complainant, in this business? A. Yes, sir.

Q. How long have you been with him? A. Since 1896.

Q. And during that time what has been your connection with the business; what part of it did you handle?

Mr. Harrison: Objected to.

The Court: Objection sustained; what materiality can it have?

Mr. Maxson: I want to show that he had knowledge of the books, and that his firm furnished a good deal of the grain for the Harrison Milling Company.

Mr. Harrison: We will admit that they furnished considerable grain to the corporation during that time, and are now furnishing some of the grain, I believe.

Q. Do you remember a time when Mr. A. Gould Harrison came in to see your father in New York, at about the time your father went into the Harrison Milling Company? A. I do.

Q. Were you present? A. Yes, sir.

Q. Did you hear all the conversation? A. Yes, sir.

Q. Was anything said at that time either by your father or A. Gould Harrison about a loan? A. No, sir, nothing.

Q. Did you have your father's power of attorney to draw checks?

Mr. Harrison: Objected to.

A. I did.

Q. Did you draw the check that paid for this stock? Did you draw the check that paid for the stock? A. Yes, sir; I drew every part of it; I did not make both checks out.

Q. Is that the stub? A. Yes, sir, this is the stub of the check for the final payment for the 40 shares of the Harrison Milling Company's stock.

Q. Do you remember going with Mr. F. K. Fish out to Montclair in September or October, 1909? A. I do, yes, sir.

Q. And at that time did you see Mr. A. Gould Harrison? A. I did.

Q. Did you have any conversation with him? A. Yes, sir.

Q. Do you remember what the conversation was? A. It seemed that father had been away in the mountains all summer long, and he got along about

the tail end of September, and he was going out to Montclair to live, to take up his interest with the Harrison Milling Company, and he wanted me to go out with him while they were making arrangements for what the salaries were going to be; so I did. We went out there and arrived in the afternoon, and met Mr. Harrison—do you want me to give the whole conversation?

Q. What did A. Gould Harrison say? A. The first question that came up was regarding the amount of salaries that each one could draw while father was there. If I remember correctly, father wanted $300.00 a month, each to draw $300.00 a month, and Mr. Harrison said he did not think the business would stand that much, but thought that $250.00 a month the business would stand.

Q. Did you hear all the conversation? A. Yes, sir.

Mr. Harrison: I would like to object to the introduction of this testimony on the ground that it is entirely new matter, and if evidential in any way it should have been produced upon the complainant's direct case. They have put in all their testimony bearing upon that resolution; what it had to do with, how it was passed, and the purpose of it, and how the drawings were made.

Mr. Maxson: I have not reached the relevant part of it yet, I am sorry to say.

Q. At that time did you hear all the conversation that was had? A. Yes, sir.

Q. Were you present all the time? A. Yes, sir.

Q. Did Mr. A. Gould Harrison at that time say anything at all to your father about overdrawals? A. Not a word.

Q. Did you look over any accounts in the books at that time? A. We did not.

Q. But you knew where your father was in the summer of 1908 and 1909? A. Yes, sir.

Mr. Harrison: We will admit he was in Summit, New York.

Mr. Maxson: During the periods which we allege?

Mr. Harrison: Yes. I ask that this testimony be all stricken out on the ground previously urged, and on the further ground that there is no testimony produced on the part of the defense in the rebuttal of which this testimony is presumed to be offered.

The Court: I shall deny the motion, but will consider it on the final disposition of the case.

No Cross Examination.

Mrs. Frederick K. Fish, sworn in rebuttal, testified as follows:

Direct examination by Mr. Maxson:

Q. Do you recall being with your husband out at Montclair, visiting Mr. and Mrs. A. Gould Harrison? A. Yes, sir.

Q. Were you there more than one time? A. Only once to stay over night.

Q. And at that time was anything said about the business of the Harrison Milling Company, in your presence? A. No, sir.

Cross examination by Mr. Harrison:

Q. Everything was very friendly at the times of your calls? A. Yes, sir.

Q. And can you fix the years during which you

made those calls? A. No, sir; I don't remember the dates at all, but this was the only time I ever stayed over night.

Q. But at other times you would go out there with your husband? A. Well, while we lived there, I called there, and while my daughter was living there I used to call, and they called at our house.

Q. Prior to your leaving there? A. My daughter and I would go over to Mrs. Harrison's house.

Q. On this occasion that you went out and spent the night there, what time did you and your husband arrive at the house? A. Some time late in the afternoon; I don't remember when.

Q. And you took supper there? A. We took dinner.

Q. And afterwards, did your husband and Mr. Harrison leave the house? A. They went down to the mill together.

CHARLES NASMYTH, recalled in rebuttal, testified as follows:

Direct examination by Mr. Maxson:

Q. You recall the matter of the purchase of the stock, the Beyea stock, as shown on the book? A. Yes, sir.

Q. Will you please analyze that Beyea account as it appears on the book?

Mr. Harrison: I object to the question.

Mr. Maxson: This is very short, and I simply want to cover this question as to the entries in this account; this is in rebuttal.

The Court: Cannot you direct his attention to the point?

The Witness: There have been statements made as to what was paid for the stock.

The Court: State it again.

Mr. Harrison: I can show your Honor pages and pages.

Mr. Maxson: He is simply on the witness stand to meet the testimony as to this loan which was part of the defense; we want to show what the books of this company show with respect to this loan; they say they have made a loan of $2,000. Now, if there is any irregularity appearing from the books with respect to that transaction, why, it is part of our rebuttal to show it; I don't understand that rebuttal relates only to the contradiction of testimony.

The Court: What do you want to ask him?

Mr. Maxson: What the analysis of this account shows with respect to the entries in the manner in which they were made in the book.

Mr. Harrison: Objected to.

The Court: Objection overruled.

A. So far as my examiation of the account went, the loan had no relevancy to the purchase of the shares. The shares were purchased by the checks, by checks for certain amounts.

Q. And to whom? A. To the order of Ida M. Beyea, I think they were made. The books show that on the receipt of the shares, 15 shares, they were entered upon the cash book as the receipt of $1,500, and, of course, no $1,500 was received in cash.

Q. See if I get this straight: the books show that $1,500 was in checks and were made payable to the Beyeas, and, in order to meet that debit of $1,500 in the cash, 15 shares of stock were credited up so as to balance the account as cash? A. Yes, sir, as cash; to offset the par value of the shares.

Q. Do the books of the company show any overdrafts of Mr. A. Gould Harrison, which were not crossed off by resolutions in the minute books?

Mr. Harrison: I object to that on the further ground that it has been covered entirely in the testimony.

The Court: I think it has been covered.

The Witness: Yes, sir; there are some overdrafts that have been written off, which are not covered by the resolutions in the minute book.

Q. Will you explain what you mean by "overdrafts written off?" A. When I say "overdrafts," I mean some of these drawings of Mr. Harrison's that have been credited to him, have been written off by credits to him, which have no relation to any of the minutes appearing on the minute book.

Q. Were those overdrafts in addition to the salary account, as shown on the book? A. Oh, yes.

Q. Did you have any conversation at the time you were out at the mill making this examination, with A. Gould Harrison, about the issue of stock, —about the stock book? A. Yes, sir.

Q. What was the conversation? A. I had been requested to ascertain whether there was a share of stock outstanding in excess of what had been authorized, as Mr. Fish was afraid that if that share was outstanding, it would give the holders of the other 50% an advantage in voting the stock; and in making the analysis I ascertained that that share had been withdrawn and cancelled, leaving just the 80 shares issued—40 shares to Fish and 40 divided up among Mr. Harrison and his relatives.

Q. Did you have any conversation with A. Gould Harrison about it? A. Yes, sir, to satisfy myself

about this one share, I discussed the issuance of the shares that were then outstanding, and Mr. Harrison explained how they came to be issued, and told me the history of the purchase of the shares by Mr. Fish.

Q. Did he say that Mr. Fish purchased the shares? A. There was no question about it; I don't know whether the exact words were used, but there was no question about anything but an ownership of the shares.

Q. In your opinion as an expert accountant, would a detail examination of these books show whether or not a loan of $2,000 was made to this company by A. Gould Harrison?

Mr. Harrison: Objected to; my objection is, that it is entirely repetition; second, it is not properly rebuttal testimony, having been covered thoroughly in the direct.

The Court: I will allow it, and note your objection to it. Answer it.

A. A complete audit would show beyond peradventure whether any money had been loaned to the company by Mr. Harrison or anybody else.

Q. And the books do not now show it? A. The books do not conclusively show anything of the kind.

Cross examination by Mr. Harrison:

Q. Refer to the original books of account of the Harrison Milling Company and show what overdrafts were not covered by the resolution in the minute book; I ask the witness if he will refer to the books of the corporation and not to his own memoranda? A. Can I have the ledger for July 31, 1909, I think it is? There is a credit shown here for $2,000 on July 31, 1909; my recollection is,

that there is no minute or resolution in the minute book to cover that; that is the only one that I recall, excepting the overdrafts that were standing at the time of my examination, amounting to $865.91, which had then not been credited at all.

Q. When Mr. Fish asked you to ascertain if an extra share above the 80 shares of stock supposed to be outstanding, or was still outstanding,—he made some reference to the control of the Board of Directors, as I understand it?

Mr. Maxson: He did not say so.

A. He wanted to be sure that there was no majority of the stock outstanding against him that would enable it to be used to his disadvantage; that is as I understand it.

Q. That was in what part of 1910? A. That was when I first undertook to go out there; I commenced on September 26th, 1910, and completed the preliminary examinations on October 4th, so it would be in that period.

Q. And you ascertained that fact, and so reported to Mr. Fish? A. I ascertained that the share which had been outstanding had been withdrawn and cancelled.

Q. That was one of the primary purposes of your examination? A. No, sir, it was a very subordinate purpose, simply incidental.

Q. When did you talk with the defendant Harrison about this loan of $2,000? A. Mr. Harrison introduced the subject to me; Mr. Fish had incidentally asked me to just satisfy myself as to how the shares had been acquired, and in looking into the matter, I came across that entry of 15 shares of stock being treated as a cash receipt.

Q. That reads, doesn't it, Mr. Nasmyth: "Fif-

teen shares of stock, account of ticket on loan?" A. It does, yes, sir.

Q. And that naturally opened up your mind to inquire as to the meaning of that expression, didn't it? A. Yes, sir.

Q. Was that satisfactorily explained to you? A. No, sir, it was not.

Q. When you made your investigation as to the meaning of "Account of ticket on loan," what did you ascertain? A. I don't think I ascertained anything regarding that particular memoranda there.

Q. Did you ascertain anything as to the custom of the Harrison Milling Company in keeping cash debit and credit entries on slips? A. Cash debit entries on slips,—yes—but not credits.

Q. Didn't it occur to you, though, that that expression, "Account of ticket on loan" would be explained by the system of cash slips which you learned about? A. I don't know whether Mr. Harrison explained that, or whether I came to the conclusion, from what my knowledge was in regard to the way Mr. Harrison had been drawing this money, but I inferred that to mean: "Ticket of loan," applying to one of Mr. Harrison's debit slips, and that, therefore, having entered on the receipt side of the cash book $1,500 which he did not receive, that he had made out a debit slip to himself and added that to what slips he had in the drawer, if any.

Q. But wasn't it explained by him that he had loaned the company $2,000? A. He had explained to me in a different relation that he had.

Q. And wouldn't that statement of a loan by him of that money, coupled with the expression "Account of ticket on loan," satisfactorily explain to your mind the entry as made? A. It did not at that time——

Q. (Qestion read). A. It did not.

Q. Why didn't it create a satisfaction in your mind, an approval in your mind? A. For the reason that it was, first of all, five months previous to the date of the entry relating to the shares; and in the next place, when Mr. Harrison told me and produced his check book as evidence that he had drawn a check to the order of the company for $2,000, I found that the proper cash record did not show the receipt of any $3,000, which was the cash book.

Q. When those two items, coupled with this excess of cash, in your mind, were considered, did not those three items satisfactorily explain to you this entry? A. I don't know of what three items you refer to, Mr. Harrison, but it was satisfactory enough evidence to me that cash had been received from somewhere; whether it was received from Mr. Harrison or not, I don't know; but when he showed me that he had drawn a check for the amount of $2,000, and explained to me at the same time that he kept the proceeds of that check in the safe, it explained why the cash was over-extended, and I was perfectly willing and did assume that that $2,000 that Mr. Harrison had loaned, represented or covered the over-expenditure that were indicated on the cash book.

Q. So the explanation which has been made of this $2,000 was put upon a cash slip in the safe, and a portion of it used in the paying for these shares of stock is a reasonable explanation considering all the facts of the problem? A. Well, I cannot say that, Mr. Harrison, so far apart, five months, in which period there was every possibility of that $2,000 having automatically extinguished itself; in other words, having automatically reim-

bursed the loaner, because it did not show in any way in the cash in the office.

Q. That was a possibility, you say; but is not the explanation which has already been given by Mr. Wenk and Mr. Harrison, a reasonable and probable explanation? A. If it is, sir, only insofar as $1,500 would apply to the $2,000.

Q. But so far as the $1,500 item is concerned, that is a reasonable and a probable explanation of that item? A. Assuming that the $2,000 ever went into the physical possession of the company?

Q. Yes,—assuming as an expert, that this $2,000 actually went into the physical possession of the company in the method described by the defendant's witness, that is, by entry on a cash slip, I ask you if, under the system of bookkeeping, as explained by the representatives of the Harrison Milling Company, a complete audit of the books of account would have any bearing upon the loan of $2,000? A. Yes, sir.

Q. What bearing would it have? A. A detailed audit of the cash would prove conclusively whether $2,000 was ever received from the company by Mr. Harrison, and ever repaid to him either in the manner in which you are claiming it was repaid, or through withdrawals of cash from time to time, as the cash came into the office, and enabled him to reimburse himself from the funds in hand.

Q. Could you tell definitely from the detailed audit, whether the defendant Harrison had paid that $2,000 in? A. Yes, sir.

Q. You referred to the automatic extinguishment of this balance? A. Yes, sir.

Q. Assuming, for the purpose of argument, that it had been automatically extinguished, would you then say as an expert, that you could, therefore,

determine the source of that payment? A. The source of the receipt, do you mean, or the repayment?

Q. Well, payment implies a receipt—source of payment by Harrison and the receipt by the Harrison Milling Company? A. Payment by him to the company or to him by the company?

Q. I intended to say the payment by A. G. Harrison to the Harrison Milling Company? A. Yes.

Q. And how? A. Well, if Mr. Harrison issued his check to the company, or drew his check to the company, and before depositing that check dealt with it in the same way in which he had dealt with other checks that he had received, that is, by taking the cash and depositing the check in the bank, there would be no record of that on the cash book; but if he took that $2,000 and kept it aside to use by the company as occasion arose—having to spend more money than the cash book showed the company possessed, it would show over-expenditures on the credit side of the cash book.

Q. Could there be an over-expenditure on the debit side? A. Not very well; it would be an over-receipt on the debit side, and if, as the collections were made, such amounts as Mr. Harrison had advanced to the company constituting the over-expenditures shown in the cash book—if he withdrew money and reinstated his fund in the bank, that would straighten matters out on the cash book, and would also bring intact his fund in the bank; so that eventually, when the company collected bills sufficient to enable him to reimburse himself for that cash, it would be automatically ended. Now, something of that kind took place within the five months, apparently, because the $2,000 was extinguished.

By Mr. Maxson:

Q. And without any credit being given to Mr. Harrison for $2,000?

Mr. Harrison: Wait a minute.

Further cross:

Q. So that there are two possible assumptions relating to the payemnt of this $2,000 by A. Gould Harrison to the company; one is, that the $2,000, if paid, was partially applied to the payment of the cost of the shares of stock; and the second, that if paid, it was consumed by Harrison, by the company, or by other persons in other ways? A. That is right, excepting that I would like to correct you in this point—as far as the $1,500 is concerned, if Mr. Harrison did not cash his check, but simply kept entry of it out of the cash book, he would have reimbursed himself to the extent of $1,500, when he brought the record of those shares on to the cash book; that would account for $1,500 of $2,000.

Q. Now, in making your examinations and audits, you sometimes refer to documents and exhibits such as checks, don't you? A. Yes, sir.

Q. I show you "Exhibit D 2," being a check of A. Gould Harrison to the order of the Harrison Milling Company, and I ask you if that check appears to be regular on its face?

Mr. Maxson: I object to that.

The Court: What is the object of that question?

Mr. Harrison: What I want to get at is this: We have put in certain evidence, including the payment of a check, including the record of the bank books, including the receipt on the stub

of the check book of the Harrison Milling Company, and I want to ask him, in his opinion as an expert, whether those elements would not prove to his mind the payment of this check.

Mr. Maxson: The Court has passed on the regularity of the check when it was admitted in evidence.

The Court: This is the $2,000 check; it has been admitted in evidence.

Mr. Harrison: The question is withdrawn.

Q. Did you examine the stub of the check book of the Harrison Milling Company as of September 9, 1906, to see if any entry appeared therein of the payment of that check? A. I have testified, I think, that I did not examine that.

Q. I show you a check, "Exhibit D 2" for $2,000 to the Harrison Milling Company; I show you "Exhibit D 1," showing in the stub of the check book on September 19, 1906, an alleged deposit, "A. G. Harrison, $2,000;" I also call to your attention entry by the Bank of Montclair on September 19, of a deposit to the credit of the Harrison Milling Company of items including this check of $2,000, and ask you, whether that does not, in your opinion as an expert, satisfactorily prove to your mind that that payment was made to the company at that time? A. No, sir, for this reason: that the proofs must be through the books of the company and not the books of the bank; we have nothing to do with the books of the bank, and the entry of an item or any number of items on the stubs of a check book are no evidence of receipt; they are simply evidence of deposit.

Q. That is the legal point of view? A. No, sir, that is the actual bookkeeping point of view; it

is the fact; the actual evidence of receipts is the cash book.

Q. So that, in making your deposits, you pay no attention to anything other than appears on the books? A. Oh, yes; we prove that what is shown in their books, if it is shown that there is a certain sum of money in the bank, we have to prove it by the banks themselves or the bank records.

Q. So that this method of proving the receipt by the Harrison Milling Company of a check for $2,000, has no importance in your mind? A. Oh, yes, it is important.

Q. What importance has it? A. It has this importance; that it enters into the transactions of the company, according to Mr. Harrison's account for the next five months. The issuance of that check, regardless of whether he actually loaned the money or simply issued amounts to the company, from time to time, as they needed it.

Q. But then it proves, doesn't it, that that money went into the company? A. No, sir, it does not prove it; it simply proves that the check went into the bank; supposing Mr. Harrison cashed that check—never mind the amount—if he cashed that check out of the funds in the office, then there was no exchange of money at all; he simply put $2,000 in the bank, and took $2,000 out of the cash in the office. It did not change the physical condition of the cash account in the least.

Q. From the fact of the payment of that check to the company, and from the further fact of the receipt——

The Court: He does not say it was paid to the company.

The Witness: Simply the check is deposited in the bank.

Q. Does this evidence brought before you, not satisfactorily prove to your mind, that on that date the company received credit on the books of the bank for $2,000? A. The company certainly received credit on the books of the bank for $2,000.

Q. So that there was, at that time, so far as the relation of the Harrison Milling Company and the bank was concerned, $2,000 more in the bank than there was on the day previous? A. In the bank there was.

Q. There being $2,000 more in the bank on the 19th day of September, 1906, than there was on the 18th of September, 1906; that money, and all the other money then in the treasury of the company might have been removed in a variety of ways, might it not? A. I don't quite follow the question.

Mr. Harrison: As I follow the witness' mind, he says that Harrison, or someone else, might have stolen the money, or taken it out in some other way.

The Witness: Oh, no, I didn't say anything of the kind.

Mr. Harrison: I understand the witness further to say, that a reasonable and probable explanation for a portion of it, is the $1,500 applied to the purchase of stock.

The Court: He does not say that it was stolen.

Mr. Harrison: I did not intend to infer that he had made any charges.

Q. In this conversation which you testify you had with Mr. Harrison, referring to the acquisition by Mr. Fish of the $40.00 of stock, you say that you don't know whether the term "purchase" was used or not? A. I could not say that the actual

term "purchase" was used; it might have been "bought;" there may not have been a direct reference to the purchase, but the explanation was such as to leave no doubt at all in my mind, that Mr. Fish had purchased his shares and owned them, and never until——

Mr. Harrison: I ask to have that answer struck out.

The Court: I will allow it to stand, so far as it is responsive to your question, but will eliminate what he said after the word "but."

Q. What was the occasion of your having a conversation with Mr. Harrison at all about the acquisition of Mr. Fish's share of stock? A. Why, in seeking to satisfy myself that that one share was not outstanding, I made a complete analysyis of all the transaction in the capital stock of the company.

Q. And had you been directed by Mr. Fish to ascertain what the books showed with reference to whether this was a loan or a purchase? A. Why, there was no question about it; certainly not; Mr. Fish never said anything more than that he had purchased the shares.

Q. But in the course of your investigation, you conceived it your duty to arrive at an opinion in that matter? A. No, sir; my investigation was not in regard to any purchase or loan of the stock; it was to ascertain what the transactions in the stock had been, so as to bring it down from the commencement to its status at that date, to check up its condition; that is all; the debit and credit entries of that stock.

Q. So that you had no purpose and did not intend, and as a fact, you did not look into the ques-

tion of whether or not this stock was bought absolutely or merely pledged as collateral? A. I am not sure whether I referred to the original entry of the receipt of cash from Mr. Fish in the two payments in which he told me they had been made in the cash book.

Q. So that was incidental, and not of any importance in your examination? A. No, sir.

Redirect examination by Mr. Maxson:

Q. When did you first hear the word "loan" used in relation to this stock? A. In this court room.

L. H. FISH, recalled in rebuttal, testified as follows:

Direct examination by Mr. Maxson:

Q. At the time when Mr. A. Gould Harrison came to New York to see your father about this stock, was anything said about any agreement with Mr. Mullen, which permitted Mr. A. Gould Harrison to draw more than his salary from this corporation in previous years?

Mr. Harrison: Objected to on the grounds previously urged to other questions asked on direct examination.

The Court: Objection overruled.

A. Nothing was said.

Sur-rebuttal.

BERT B. TICHENOR, recalled in sur-rebuttal, testified as follows:

Direct examination by Mr. Harrison:

Q. Did you ever hand checks of the Harrison Milling Company to Mr. Fish, to be signed by him in blank? A. No, sir, never.

Mr. Maxson: I submit that that covers the whole subject.

By the Court:

Q. Did Mr. Fish ever hand you checks signed in blank? A. No, sir.

Further direct:

Q. I show you "Exhibit L. A. Z. 2," and ask you if you ever gave Mr. Fish statements concerning the A. Gould Harrison account, in addition to that statement? A. I did.

Q. How many? A. Well, two or three; I don't know just the number.

Q. Did you discuss "Exhibit L. A. Z. 2" with Mr. Fish? A. I made it out for him and explained it to him as best I could.

Q. And his request for this statement was put in what form? A. He wanted a statement showing the charges, debit charges, against Mr. A. Gould Harrison's account.

Q. Did these other statements which you showed to him, show, besides the debit charges, the credit entries? A. All the other statements showed the credit entries.

Mr. Harrison: I ask for the production of this other statement.

Mr. Maxson: We have asked for their production two or three times.

Mr. Harrison: We have turned them over to them.

Mr. Maxson: We would be very glad to produce it if we had it. If we have it, we don't know where it is.

Cross examination by Mr. Maxson:

Q. Did you ever have any conversation with Mr. F. K. Fish about signing checks in blank at all? A. I don't think so.

Q. You don't recall whether he ever told you not to give him checks to be signed in blank? A. I never had occasion to give him checks to sign in blank.

Q. You don't remember, do you, what was filled in to the stub of this certain check which is under discussion, the $115.00 check? A. No, sir.

Q. You know it was filled in differently? A. Something had been started in this stub and not finished.

Q. And that had been erased, and then A. G. Harrison's name had been put in? A. Yes, sir.

Q. And you did that? A. I think so.

Redirect examination by Mr. Harrison:

Q. This check presented this morning, to the order of J. Marshall and Ball for $22.00, by reference to the stub, can you tell me for what purpose that check was drawn? A. By referring to the stub of the check book.

Mr. Maxson: How is that relevant; we have admitted that check was drawn for us.

The Court: And that Mr. Fish had the proceeds of it—that it was for his benefit; do you

question that at all; do you raise any question about it?

Mr. Harrison: It is not the fact; we will let it stand as it is; it is merely to straighten the record out; I don't see why he should have any objection.

A. This check was drawn, among others, on November 5th, to the order of J. Marshall and Ball, and charged to the account of George W. Dunn.

Q. And who is Dunn? A. The foreman of the Harrison Milling Company.

Mr. Harrison: Now, if the Court please, I would request when another day is fixed, that the usual practice and courtesy be followed, namely, that the solicitor on the other side be notified of the application for fixing a day; we have not had notice of a single day, and I am frank to say, that I think it is not only discourteous, but I think it is entirely contrary to the rules of this Court, and I feel rather strongly about it. We have tried to accommodate ourselves to the pleasure of the solicitor of the complainant, but we have not had a notice of the fixing of a single day.

The Court: In this case, the difficulty with the case has been that it has dragged along. Now, nobody was at fault on November 9th, no one who is at present in the case.

Adjourned to a day to be fixed.

J. H. Harrison—By Defendants—Direct.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK K. FISH,
Complainant,

and

A. GOULD HARRISON,
Defendant.

Chancery Chambers, Jersey City, N. J.,
March 9th, 1914.

Before

Hon. VIVIAN M. LEWIS, Vice Chancellor.

Hearing of the cause resumed at 2 o'clock P. M.

J. H. HARRISON, Esq., sworn.

Direct examination by Mr. McCarter:

Q. Mr. Harrison, you are the solicitor of the defendant in this cause? A. One of them.

Q. And you are a brother, I think, of A. Gould Harrison? A. I am, sir.

Q. It has been suggested in some way on the record in this case that you had had some business transactions with the corporate defendant, having loaned them money, or something of the kind—what is the fact about that? A. I never loaned the Harrison Milling Company any money at any time, and never had any business transactions with the company except as its attorney for perhaps three or four years last past.

Q. Then whatever the record contains about that in the way of suggestion is an error? A. I should say so.

Q. Now, I show you a certificate, numbered 14, for nineteen shares in the name of A. Gould Harrison, of the Harrison Milling Company, which seems to have already been marked "L. 5½," whatever that means. Please look at that certificate and tell me if you recall that certificate having been signed by Mr. Fish, whose name appears annexed to the title "President"? A. This certificate was signed by Mr. Fish on the 23rd day of March, 1910, at a meeting held in my office, then at 800 Broad Street, Newark, N. J.

Q. Do you know in lieu of what certificates that particular certificate was issued? A. At that time my brother Gould had in his possession two certificates, one of fifteen shares, and another of four shares; one came from Ida M. Beyea and the other from E. A. Beyea; my recollection is that the Ida M. Beyea certificate was the fifteen share certificate, and the E. M. Beyea certificate was the four share certificate.

Q. Had those shares, prior to the day on which this certificate which you have before you was signed by Mr. Fish, ever been actually transferred on the books to your brother? A. My information was that they had not.

Q. And where was it that Mr. Fish actually signed the certificate in question? A. As to place?

Q. Yes. A. In my office, at this meeting to which I have just referred.

Q. Who were present at that meeting? A. Mr. Frederick K. Fish; Mr. Swallow, Mr. Fish's son-in-law, I believe; Mr. Robert K. Knowles; my brother Gould and I.

Q. And this, then, now constitutes the certificate that your brother now holds for the so-called Beyea stock (referring to the certificate identified by the

marking L. 5½)? A. It includes those two certificates, as I understand.

Mr. McCarter: I would like to offer this certificate in evidence. I do not know that it has been offered in evidence before.

Mr. Maxson: No objection.

Mr. McCarter: It has already been marked once.

(There being no objection to the offer, the paper is received in evidence under its original marking, L. ½.)

Q. Mr. Harrison, there has been some testimony in this case with regard to your having purchased from your brother Gould a house and lot in Caldwell, the proceeds of which he used in connection with the matters arising in this controversy; do you remember the transaction? A. I do, sir.

Q. I show you a check in your own check book, dated September 18, 1906, check number 107, on the Caldwell National Bank, to the order of A. Gould Harrison, and signed J. H. Harrison for $1,975; was that the check you gave your brother? A. That was the check I gave my brother at or about that date, and represented the balance on account of purchase price of premises on Washburn Place in the Borough of Caldwell.

Q. And this check bears your brother's endorsement, does it not? A. That is his endorsement.

The Vice-Chancellor: That is in evidence, is it not?

Mr. McCarter: It already has a mark on it.

The Vice Chancellor: You can offer it again.

Mr. McCarter: Yes, we will offer it again. I won't mark it again.

The Vice Chancellor: It is received, under the same marking.

Q. I want to direct your attention for a few moments, Mr. Harrison, to that meeting that occurred at your office at which time you say Mr. Fish signed the certificate for 19 shares of stock, marked L. 5½. Had you heard before that meeting, that Mr. Fish had refused or declined to sign the proposed certificate for your brother of the stock that he purchased from the Beyeas? A. I had, sir.

Mr. Maxson: I object, and ask that the answer be stricken out. Unless it was in our presence it is not binding on us.

The Vice Chancellor: I will have to strike that out, Mr. McCarter.

Mr. McCarter: I do not care enough about it for the present.

Q. Well, whatever you had heard before, what occurred at that meeting with regard to the signing of this certificate?

The Vice Chancellor: What did Mr. Fish say then?

Q. Yes, just tell all that occurred between you and Mr. Fish about that, on behalf of your brother? A. The meeting opened, I should say, about three o'clock. By prearrangement with my brother, I took the certificate into the room and asked Mr. Fish to sign the certificate, saying that I understood that he had refused for a month or more last past to sign it. He said, "I refused to sign it on the advice of counsel." He said, in effect, "Mr. Knowles, look at that certificate"——

Q. (Interrupting.) Mr. Knowles was what at that time? A. Mr. Knowles was the attorney with whom I had had the negotiations, and through

whom I had arranged this meeting. Mr. Knowles looked at the new certificate, and also at the two old certificates, and raised the objection to one of the old certificates (as I recall, the 4-share certificate), saying that the signature of the former owner of the certificate had not been witnessed. I then suggested to him that I would prepare an affidavit which I thought would cover the difficulty and remove his objections. I then called a stenographer who came into the library from the other portion of our office across the hall, and dictated the affidavit which you have before you.

Q. (Exhibiting a paper to the witness.) Is this the affidavit that you dictated in the presence of Mr Fish? A. That was the affidavit which was transcribed by my stenographer, and which I dictated in the presence of Mr. Fish and the other parties mentioned.

Q. And your brother signed it? A. My brother signed it, and swore to it before me.

Q. Go on. A. The stenographer went out of the room, and then some general discussion was had concerning the ownership of these nineteen shares——

Mr. Maxson: Just a minute. I move that be stricken from the record.

The Vice Chancellor: Just strike out the words from "and then some general discussion."

A. (Resuming) ——and then, in her absence, discussion was had concerning the 19 shares of stock. Reference was made by Gould to the loan by him of $2,000 to the company. Mr. Fish laid particular stress upon his——

Mr. Maxson: Just a minute. I object, unless the conversation is given.

The Witness: That is correct. I did not mean to go off into general gossip.

The Vice Chancellor: Mr. Fish said what?

A. Mr. Fish said that he had treated Gould very well in permitting him to charge off against merchandise or expense the excess paid by him over par, amounting, as I recall, to something around four hundred dollars.

Q. Paid for what? A. Paid for the fifteen shares of stock.

Q. The Beyea stock? A. The so-called Beyea stock. Either Gould or Mr. Fish brought up the question about a note having been discounted by the company at the time of the purchase of the stock. My recollection is that Mr. Fish first raised that question; and——

Q. Did he make any objection? A. There was no objection made at all. And I think Gould then told him that the money which he had loaned to the company had been used in one way or another in the way of payment of drafts, or something of the sort, and that the cash funds of the corporation were slow at that time, and in the usual course of business a note had been discounted, and, as I recall, a reference was made to the endorsement of Gould's wife of this particular note. The stenographer then returned to the room with the affidavit, and I took the oath, as will appear from the affidavit, and Mr. Fish was handed a certificate by Mr. Knowles. He signed the certificate, and then either Gould or I took it, and it has been in our possession ever since.

Cross examination by Mr. Maxson:

Q. At the time of this conference or meeting at your office, Mr. Harrison, no action had been

started in this or any other court? A. I think that action was started a few months after that, Mr. Maxson—in the fall, as I recall.

Q. And had Mr. Fish ever told you, previous to this meeting, that the books of the company did not show, or did show, rather, that this stock was purchased out of the treasury of the company with its check? A. No, he had not.

Q. Had that ever been discussed previous to that meeting? A. Well, do you mean in a discussion 20 at which I was present?

Q. Yes. A. No; I think that that was the first meeting at which I attended; although my impression is that there was a short meeting two or three weeks before this meeting of the 23d.

Q. Yes, but there had been some negotiation between you and Mr. Knowles, or Mr. Taggart, who was the New Jersey attorney then in charge of Mr. Fish's matters—or had he come in at that time? A. I think Mr. Taggart had not come in at that time; I think it was entirely up to Mr. Knowles.

30 Q. Then there had been some discussion between you and Mr. Knowles about these different matters of difference between your brother and Mr. Fish, previous to that meeting? A. Yes, Mr. Maxson, I will correct myself—I think the meeting to which I refer was a meeting between Mr. Knowles and me, and not a meeting where the principals were present; and at that meeting there was discussion about the stock and about the withdrawals. I, I might say, had only come into the case a very short time before that.

Q. The question is, previous to the meeting, when 40 Mr. Fish signed this certificate of stock, had Mr. Knowles ever made any suggestion to you that this

stock had been paid for out of the treasury of the company and by its check; or had Mr. Fish done so? A. I won't be positive about our previous meeting, but from the conversation had at the meeting of the 23d of March both sides seemed to be entirely familiar with what went on.

Mr. Maxson: I move to strike that out, as not responsive.

The Vice Chancellor: I think I will let it stand. You may press your question.

Q. (Question repeated.) A. No.

Q. You purchased this property from your brother. You do not know anything about his having made a loan to the corporation, personally, do you? A. I knew that he intended to use the money for that purpose.

Q. Well, but you do not know that he did do it?

The Vice Chancellor: Do you mean the money that he received from him?

Mr. Maxson: That came from the purchase of this real estate.

A. That was the particular purpose, as he stated to me, for selling the property.

Mr. Maxson: I move that that be stricken out. That is not responsive.

The Vice Chancellor: It is, in a measure, responsive. You asked him did he know; he says, "I understood that was the purpose."

Mr. Maxson: I asked him if he ever knew that that loan was actually made to the corporation.

The Vice Chancellor: He can answer that further by information—if he had information to that effect, or otherwise. (To the witness.)

Did anybody inform you that that was the purpose of the loan?

A. Yes, my brother informed me that; and he informed me later that he had made the loan.

Q. But you do not know from the books of the company? A. I never saw the slip that it was supposed to have been entered on; I never examined the books until the matter came to a crisis; as a matter of fact, I was not interested in it.

Q. As a matter of fact, you know that the books of this corporation do not show any such loan?

Mr. McCarter: That is the question here.

A. I think they do; if you are asking me as an expert accountant, Mr. Maxson, I think they do.

Q. No, but didn't you make the statement the last day that we were in this court, that you intended to produce an expert witness here who would testify that the books do not and would not show any such loan by your brother to the corporation? A. I fail to see the materiality of that, as to what my testimony at the last hearing was. I might say, if the Court desires me to (I do not think it is material on the record) that——

The Vice Chancellor: Well, what is it?

A. That I contemplated then putting in further evidence from expert accountants; but I have, on going over the matter, determined that I would not do it; that it was a useless encumbrance of the record.

Q. Didn't you say in this Court, at the last hearing, that you intended to produce an expert witness here, an accountant, who would testify that the books of the Harrison Milling Company did not and would not show a loan of $2,000 from your

brother to the corporation? A. I will answer I did not.

Q. What was the witness to testify to? You made a statement as to what he would testify to?

Mr. McCarter: I object. That was talk; that was a conference and talk to the Court.

Mr. Maxson: I submit that it is proper cross examination, to test the credibility of this witness.

The Vice Chancellor: Oh, I do not think so. I do not think that he is now in a position to testify as to what this man might, if brought here, testify to. They might have regarded it as injurious to their case to have brought him here.

Mr. McCarter : I will assume the responsibility for that.

Q. Did not you, in conversation, in the colloquy that took place before the Court, when I suggested to you that that sort of testimony was immaterial in this case, say that you had the right to produce a witness to testify to these facts, because we had, in our direct case, shown that the books did not show it and that they could not show it?

Mr. McCarter: What has that got to do with the examination, your Honor? I cannot see it.

The Vice Chancellor: What has it to do with it, Mr. Maxson? How is whatever he said then binding on this corporation, or how is it proper evidence to test this issue here?

Mr. Maxson: Well, if Mr. Harrison knows about the books, and knows enough to know whether this loan was made, and comes in Court here and says he is going to produce a witness to show that the books will not——

The Vice Chancellor: All that the Court recalls as to the other day is that he put it off on the ground that he wanted to have an expert examined, and wanted to testify himself, and he particularly wanted Mr. McCarter here to examine him.

Mr. Maxson: My recollection might not be clear about what he said——

The Vice Chancellor: I do not remember anything further; but, however, it would not be binding—what he said here in open court.

Q. Two or three months subsequent to the time when you purchased this property for your brother he paid to you, by his checks, about the same amount of money that you paid him for the property—is not that a fact? A. I never heard of it. I never received the checks.

Q. Never received $1,800 in checks? A. Not that I recall.

Q. Have you the check book here, Mr. Harrison, that was offered in evidence?

The Witness: Let me see my check book, Mr. McCarter., If I had known it would be needed I would have produced my little ledger.

The Vice Chancellor: This was a check from him. That book would not show it.

The Witness: It would show it. You see I keep a pretty full stub. About what time was it?

Q. It was somewhere between June and September, 1910. A. 1910? You said three or four months subsequent.

Q. 1909. A. Well, this transaction was in 1906; this check was dated September 18, 1906 (referring to Check No. 107 in witness's check stub book).

Three or four months after that would be October or November.

Q. Then did your brother repay to you, sometime subsequent to the purchase of this property, about the same amount of money that you paid him for the property? A. He never did. I am positive of that.

Q. Sure about that, are you? A. I know he did not.

Q. Well, if we had the check book here we could show you the check. A. What check book do you want?

Q. Your brother's check book. His check book shows the payment of something like $1,800 to you about that time. A. Will you fix the period of time again?

Q. Well, it was in between June and September in 1909. A. Now, I am positive that there was never a penny of this money returned. Now, it might have been the proceeds of a note which we used as the part purchase of a piece of property which I took in my name, and the note, as I recall, was discounted in the Bank of Montclair. I got the proceeds. The amount of the note, as I recall, was approxiamtely $1,600, and it was for the purchase price of a piece of property in the Caldwell Cedars. The history of that note I am perfectly ready to give, as I recall.

Q. Well, I do not care about that; I am only asking you whether that had anything to do with the other transaction? A. Absolutely nothing. It is pretty hard, you know, Mr. Maxson, when you are a fairly busy man, to recall a lot of details, and I am surprised at your asking it.

Q. I am only asking you whether it had to do with the same transaction. You said "No." A. Well, I tried to tell you.

Q. Mr. Nasmith's examination of these books did not take place until after the meeting where this discussion about the stock took place, did it? A. Presumably not.

Q. Well, you know that it did not, don't you? A. There was some discussion at that meeting concerning an audit, which we were perfectly ready to let Mr. Fish have at his own expense, but not at the expense of the corporation.

Q. But no audit had been had before Mr. Fish signed this certificate of stock which has been offered in evidence? A. I think not.

By Mr. McCarter:

Q. Had the question, however, of the title of your brother to this Beyea stock arisen before this certificate was actually signed? A. Not unless you claim that the discussion to which I referred, while the stenographer was out of the room, was a questioning of the title, when, as I think I told you, the details of the transaction by which the stock was acquired, were gone into; and that was, I might say——

Q. Go ahead—that was before he actually signed the certificate? A. That was before he actually signed the certificate.

Mr. McCarter: That is all I want with Mr. Harrison, I think, and that is all the evidence we have.

CHARLES J. NASMYTH, being duly sworn by the Master, testifies as follows:

Examination by Mr. Maxson:

Q. Mr. Nasmyth, you are a certified public accountant in New York City? A. Yes.

Q. You were examined as a witness in open court in this trial? A. Yes.

Counsel for the defendant admits the qualification of witness.

Q. Since the trial of the case, have you made an examination of some of the books of the Harrison Milling Company? A. Some of them.

Q. Which books did you examine? A. I had reference to the cash book for the years 1906 and 1907, and the journal, ledger and check books covering the same period.

Q. For both entire years? A. No; the end of 1906 and the beginning of 1907.

Q. From what specific dates, if you can say, did your examination go? A. Only the period which might be called the detailed examination, which covered from about the first of September, 1906, I think, to the first of March, 1907, about six months.

Q. Was the examination of all the books you have stated in your previous answer, made for that period? A. My recent examination?

Q. Yes. A. Yes, confined practically to those except one or two references to accounts for the current year.

Q. Did you take off a detailed note of that examination? A. Yes.

Q. In your own handwriting? A. Yes, partly; I have an assistant.

Q. How were the notes made by him? A. At my dictation.

Q. Have you the notes with you? A. Yes.

Q. Will you refer to them?

Witness refers to notes.

Q. Can you, by reference to your notes, so refresh your memory as to the place in the books and the accounts where you found charges made in favor of A. Gould Harrison, or against him?

Mr. Harrison: I object to the question on the ground that it is not a matter to be testified from memory of the witness, but should be evidenced by the actual production of the books.

A. The general expense account shows, in the cash book, is simply a summary of certain amounts that have been paid out for different purposes. In the course of my detailed examination I would classify these various expenditures under their proper headings, with the result that the general expense account, which in the course of the year would aggregate as shown in the books several thousand dollars, after that classification had been made, would not amount to anything like that; probably an average of $100.00 per month. Many of these expenditures, when separated, would go under such headings as "wages or labor," "Sundries," "Merchandise" and what would go under "general expense."

Q. Was there any account in the books on which charges for labor were entered? A. It was not called labor; it was called wages, but it meant the salary or wages of mill hands. The only amounts that were charged to that general salary account were weekly wages; not the extra help or items of that character, which were charged under general expense.

Master: What has all this to do with A. Gould Harrison?

Witness: Nothing; A. Gould Harrison's account is all separate to those. The object of this analysis primarily was in relation to the alleged loan of $2,000 with the view of ascertaining, if possible, whether the books showed that that $2,000 was actually loaned. That is one of the things that has been most in dispute and which really calls for some explanation I think on the part of the Company.

Q. Proceed with your discussion of the different items of account where you found you could not determine where the different moneys charged up went and for what purposes used.

Mr. Harrison: I object to the continuance of this witness on the ground that it is not pertinent within the issues of order of reference in this case.

Witness: I did not mean to convey the impression that I could not say to what account it had been charged up. All the cash that is recorded as received or expended is clear enough in the books as to where it has been charged. There has not been a general distribution of some of the disbursements as an accountant would consider proper or advisable, but still the record is clear enough as to the accounting of that expenditure; it has been posted to some account.

Q. Especially with respect to A. Gould Harrison's account; under how many different accounts did you have charges against him? A. Outside of his personal account, which we already have a detailed statement regarding, other amounts which

are charged to his account (I mean to say in connection with the business) are such as traveling expense account; they were such expenditures as a box of cigars or something of that kind, I have not the totals of the account, simply the amounts. That would all be under general expense. They were items of expense made by Mr. Harrison himself, but not on his personal account. I could not tell you if there were any items relating to his own personal use that have been charged against these accounts. In one or two instances items did appear which had been charged to someone else, like Mr. Harrison, or somewhere else, that had ultimately been entered in the journal, giving them credit and charging to some expense account, or loss or gain. I have not a schedule of them at all.

Q. Did you examine Mr. A. Gould Harrison's expense account? A. Traveling expenses; that shows for days each month.

Q. Is that in any way itemized on the books? A. As I understand from Mr. Harrison——

Mr. Harison: I object to the testimony as being hearsay.

A. I understand from Mr. Harison that it was relating to his expenditures of the business; that is the only other account which relates, you might say almost exclusively, to Mr. Harrison, himself. We have already obtained schedules of his personal drawings and find they agree with the statement they furnished in the beginning of this inquiry.

Q. You mean that was analyzed on the original record here in the court? A. Yes; it is all included in the original record.

Q. Did you find any items of moneys expended for Mr. Harrison's benefit on the books of the Company which are not included in those accounts al-

ready discussed on the original record? A. No, not in that short period, outside of the traveling expense account, that I recall; not of Mr. Harrison personally; and such items I have mentioned where he bought cigars or something of that kind charged to expense.

Q. Why do you mention cigars? A. I only mention that as something I recall; I am not laying stress or emphasis on that.

Q. Let us go into the question of the alleged loan of $2,000 to the Company. What did you find on your examination of the books as to that? A. I was not able to get a thoroughly clear conception of that account, or of that transaction, entirely from the books. Mr. Harrison's allegation is that he loaned the Company $2,000 about the twenty-first of September, 1900, I think. There is nothing in the books of original entry that recall the receipt of that money.

Master: What do you mean by the books of original entry?

Witness: A cash book for expenses. The cash book does not show on the receipt side the receipt of $2,000 or any amount.

Master: Are the deposits shown on the check book?

Witness: Yes.

Master: Is there a memorandum of any such deposit on the check book.

Witness: There is a memorandum of the deposit made on or about that date. On the check stubs included in which is a check for $2,000 of Mr. Harrison's.

Master: Is that carried into the cash book?

Witness: No.

Master: Is there any record in any ledger?

Witness: No record of any amount except on the stub of the check book, for a period of five months or so, then it is a very ambiguous record. It is a record that explains nothing and the whole transaction is dependent on the parties responsible for the bookkeeping.

Q. What is the entry in the cash book which you found after five months had expired. A. A transaction took place involving the purchase of some 15 shares of stock. Under date of February 21, 1907, I think, on the receipt side of the cash book appears an entry of 15 shares of stock A. Gould Harrison, ticket on loan.

Q. What is the amount of that entry? A. $1,500.

Q. Did you examine the books to find any evidence of any credit to Mr. Harrison for the payment of the additional $500? A. No, I have not been able to trace how the other $500 was brought on the books, if at all. Assuming that the $1,500 is intended to be a belated 5 months' entry of a portion of a $2,000 loan alleged to have been made to A. Gould Harrison by the Company.

Master: That is on the cash book five months later?

Witness: Yes.

Q. Did you find any entry in any of the books of the Harrison Milling Company except on the stub of the check book which shows this $2,000 in any way? A. No, except in the pass book; it would not show the specific item of $2,000; it would be included in the total deposit of that day on the bank book. Where I referred to the 15 shares of stock; what was the Ida M. Beyea account.

Master: This corporation had a ledger?

Witness: Yes.

Master: And a journal?

Witness: Yes.

Master: Is there anything on the ledger or journal that shows this $2,000 alleged advancement?

Witness: No, it does not come in to the regular books of account at all as far as I have been able to ascertain. You can understand that making a note on the receipt side of the cash book for $1,500 when not actually received would make the cash $1,500 short in balancing.

Master: Did you find any such shortage?

Witness: No, sir, I did not find such a shortage. As I say, this $1,500 having been entered, it, technically speaking, is a debit to cash and a credit to whom it was received, might be interpreted to be a belated entry of $1,500 of the $2,000 alleged to have been loaned in the middle of September.

Master: Was it not the custom to carry into the cash book the deposits shown on the check book?

Witness: Nothing ought to be shown on the stubs of the check book, or whatever record is kept of deposits, that is not a direct transcript from the cash book. Cash received or disbursed should show in the cash book; that is the original record.

By Mr. Harrison:

Q. Did you examine the ledger account of the Harrison Milling Company and the bank of Montclair? A. I had the book from the bank, which would be the rough ledger showing the status of the Harrison Milling Co. account from the period about

which we are concerned and it reflects the same condition as is shown by the stubs of the check book.

Q. So to that extent you desire to correct the testimony given before Vice Chancellor Lewis to the effect that you were not successful in finding any record connected with this loan?

Mr. Maxson: I object to the form of the question unless witnesses's attention is expressly directed to the testimony.

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A. At the time I testified before the Vice Chancellor I had not made an examination of the books of the Bank of Montclair or any examination for this purpose.

Q. Referring to the Ida M. Bayea account, where this entry of $1,500 is found, do you find any other credit entries under the same date? A. Yes; no credit entries to Ida M. Beyea nor debit entries which would be cash credits of course.

Q. What other debit entries do you find? A. On or about February 21 (I might say here that
30 some of the entries which have reference to the same transactions are on the 18th, 19th and 21st according to my figures) I find a payment to Ida M. Beyea on account of bonus on four shares of stock $80.00. On the 19th to Ida M. Beyea on account of the 15 shares $462.68. On the same date, $90.00 interest on dividend, and on the 21st to Ida M. Beyea two payments of $337.32 and a final payment of $1,000 purporting to complete the transaction.

Q. Making a total amount of debit items of how much? A. I think that would be $1,620, would it
40 not? I believe there are some other entries.

Q. Is it not $2,025.68? A. The actual amount

you mention I think is the total amount paid for these shares. That amount, as you recall it, is $2,025.68.

Q. Does that ledger account balance? A. Yes.

Q. Do those separate debits and credits on the ledger entries account refer by number to debits in the cash book and journal of the corporation? A. Yes.

Q. Are those debits and credits on the cash book or journal properly entered and explained? A. They are properly posted; the explanation is somewhat meagre; whatever the cash book says; I cannot recall now, but they are not sufficient on their face to be a sufficient explanation without an explanation of the bookkeeper or someone familiar with the transactions at that time.

Q. Did you find a debit entry of $80.00 for interest and dividends in that account? A. To Ida M. Beyea, yes.

Q. Might that not explain a further expenditure of that amount out of the alleged $2,000 loan of Mr. Harrison? A. If my transcript is correct here, it says: "I. M. Beyea, bonus on 4 shares of stock, $80.00"; that relates to four shares in addition or in excess of the 15 we are discussing. I think they were bought of the Mullen Estate and therefore did not enter into this transaction, only so far as the premiums that were charged against the company.

Q. What kind of premiums? A. On these four shares, $80.00.

Q. What was the premium on the 15 shares? A. I do not know whether I have it here. I think it was the same, $20.00 per share. It is all included in this amount that was paid.

Q. Something over $300, as you recall? A. Yes, I think it was.

Q. Might that sum of something over $300 be a belated entry of that amount which would serve to partially explain and account for the $2,000 alleged loan of Mr. Harrison? A. I cannot see the relationship. We are talking now about disbursements, and what we are short are receipts. We have only $1,500 accounted for, if at all, on the $2,000. The $500 that I have no trace of relates to the receipt side and not the disbursement side of the cash book. You are speaking of disbursements.

Q. Is there not also a receipt shown there of $525.68 which was carried to the ledger with proper reference to the journal folio, a receipt from Beyea? A. No receipt shown on that account.

By Mr. Maxson:

Q. Can you state from your notes how much, in addition to Mr. Harrison's salary, the books show he had drawn in the period when this alleged loan was made?

Mr. Harrison: I object to the question on the ground that the witness is testifying from the books of account of the corporation alone, and the evidence already produced shows that certain salary resolutions were passed and certain credits were given for withdrawals.

Question withdrawn.

Master: Aside from what the books themselves show, there is no doubt in your mind but that the bank account of the Harrison Milling Co. was increased $2,000 on a certain day, September 21st?

Witness: There is no doubt that account was increased $2,200, the amount of the deposit on that day.

Master: Is there not a $2,000 separate item?

Witness: No, it is all in one, $2,200. There is no doubt Mr. Harrison's check of $2,000 went into the account of the company; that shows on the bank record and also on the stub of the check book.

Sworn to before me this 18th day of September, and subscribed to this day of September, 1914.

Further testimony taken the fifth day of October, nineteen hundred and fourteen, at 11 A. M.

Cross examination of Mr. Charles J. Nasmyth, by Mr. Harrison:

Q. Mr. Nasmyth, what is the gross amount of the salary withdrawals by A. Gould Harrison subsequent to the resolution crossing off withdrawals of forty-five hundred odd dollars, and dated in November, 1905? A. I do not think I can give you that exactly, only approximately. I could make a deduction of $4,500 from the $11,000. That is the only way I could arrive at it.

Q. Then you have no tabulation of the salary payments as such? A. No.

Q. What is the net amount of payments on the so-called drawing account subsequent to this resolution just referred to, crossing oy the $4552.63? A. I think it would be about $6,000.

Master: Does not the total withdrawals that Mr. Harrison asked for show in the A. Gould Harrison account?

Mr. Nasmyth: Yes, it does.

Master: Why not refer to the A. Gould Harrison account?

Mr. Nasmyth: It covers a good many years.

Q. I mean since the date that was provided in the order, November 18, 1905.

Master: What is the total fund that A. G. Harrison has withdrawn from the company as shown by that account (Exhibit B)?

A. The total withdrawals since November 18, 1905, are $7,113.62.

Q. Do the books give him any credit on that? A. There are credits that have been entered from time to time, two items, one of $680 and the other of $1,040, representing an increase in his original salary.

Q. So that the books show a net withdrawal of how much? A. In addition to that, there are other credits that have been taken which purport to be supported by authorized minutes, the total of which added to this I have just given, $6,245.05.

Q. Making a net balance, as shown by the account, of how much? A. $868.58.

Q. Those are our figures, too. A. I stated just now "supported by minutes." I should add that there is about $2,000 for which there is not a minute to support.

Q. That will be up to the Court. What were the weekly salary payments to A. G. Harrison during the period just referred to, from November 18, 1905? A. Up to what date?

Q. Up to December 1, 1909. A. The weekly amount was $40 per week up to this date; I think you mentioned January 1, 1910.

Q. Can you show me on the books any weekly salary payments as such, of $40 per week? A. No, sir; not as a charge.

Q. Don't you know that the weekly salary pay-

ments were $20? A. Yes; there is a minute authorizing——

Q. I do not want anything about minutes. I want to know about the weekly salary payments. A. $40 per week was the salary.

Mr. Harrison: I ask that be stricken out as not responsive.

Master: Can you not tell us what the books show as to the weekly salary A. G. Harrison got in that period?

Mr. Nasmyth: Yes; $40 per week.

Master: Is that $40 per week charged in any specific account for salaries?

Mr. Nasmyth: Yes, to general salary account, in the general pay roll.

Q. Can you show me any one payment of $40 per week to A. G. Harrison on salary account? A. No.

Q. Then why do you say they were $40 per week? A. Because when the increase was made from $20 to $40 Mr. Harrison or the bookkeeper elected to treat the addition in a different way to which the original $20 was charged and taken up in the regular weekly pay roll.

Q. So, during the period I have just referred to, the only payments shown to have been made to A. G. Harrison each week were $20? A. That is so, as far as I was able to trace it.

Q. And the gross amount of those salary payments was how much? A. Two hundred and nine weeks at $20 per week from December 1, 1905, to November 30, 1909.

Master: Why do you say the books show payments to him of $40 per week as salary?

Mr. Nasmyth: The other $20 was charged

directly to salary account, but did not go through the weekly pay roll; it was not taken up on the weekly pay roll.

Master: Does it show in the same account?

Mr. Nasmyth: It shows in the general salary account.

Q. A portion of that is also included in the A. G. Harrison drawing account? A. The credits are accounted in the A. G. Harrison account.

Q. What amount of credits is there in the A. G. Harrison drawing account which you make up the weekly salary of $40 during that period? A. $5,696.55.

Q. Does the amount just given by you also include credits for runabout, under date of November 30, 1907? A. No, it does not.

Q. So the amount you have just given is the amount of the credit that he has taken on the theory that he was entitled to $40 per week salary? A. On the theory, yes.

Q. Have you also taken into consideration, in your computation, a change in salary beginning October 1, 1909? A. No, I have not taken any extra salaries into consideration from that time

Q. Assuming that the salary from October 1, 1909, to December 1, 1909, was $250 per month, how much additional credit would A. G. Harrison then be entitled to? A. $500, of course.

Q. Five hundred dollars less the $20 per week which he had already drawn in the salary account? A. I don't know about the $20 you speak of. I don't know whether that $20 was still drawn and taken up in the pay roll.

Master: If the cash book for the months of October and November show a payment of $20

as formerly, then this credit of $500 ought to have deducted from it that number of weeks at $20 per week?

Mr. Nasmyth: It certainly should be. If I understand the question to apply to the amounts that Mr. Harrison might have been entitled to take credit for on his personal account, my recollection is, in looking this matter up, that Mr. Harison drew that $250 every month and therefore would not be entitled to the credit for it.

Q. We will prove later that he did not begin until December 1st to draw the $250 per month. What would be the net amount of debits against the drawing account of A. G. Harrison, after you have given him the credits to which you have just referred? A. $500.

Q. No. Did I not understand you to say that there should also be a credit of $5,696.55? A. The books show that he has taken credit for that amount.

Q. What then would be the net amount of the debits, after giving him allowance for those credits, to which, as I understand you, you say he was entitled to on the basis of $40 per week salary? A. If I understand your question, the only credits he has not received are the two months of $250 each and that if he is entitled to that credit it would reduce this $868.58 to $368.58.

Mr. Harrison: I think, if the court pleases, this witness should be exhausted; if there is anything more from the witness, it should be gotten now.

SAMUEL H. WENCK, being duly sworn by the Master, testifies as follows:

Direct examination by Mr. Harrison:

Q. Mr. Wenck, what is your business? A. Treasurer of the Town of Montclair, and also certified public accountant.

Q. How long have you been treasurer of Montclair? A. Six years.

Q. What has been your experience in the matter of the examination of books of account? A. I have made such examinations since 1896.

Q. For whom have you made such examinations? A. For various parties.

Q. Name some of them. A. Patterson & Corwin, Teele & Dennis, and the Audit Co. of New York.

Q. You have alsc been engaged in municipal accounting, have you not? A. Yes.

Q. To what extent? What municipalities have you examined? A. I have examined the Borough of Caldwell, Village of South Orange, and Township of Livingston, and the County of Essex.

Q. Have you recently made an examination of the books of account of the Harrison Milling Co., with particular reference to the A. Gould Harrison drawing and salary accounts? A. Yes, I did so last week.

Q. What do the books show as to the salary payments made to A. Gould Harrison from November 18, 1905, to November 30, 1909? A. $4,200.

Q. Those payments were made at what rate? A. $20. per week.

Q. Beginning with December 1, 1909, at what rate were salary payments made to him? A. $250 per month, after that date, paid monthly.

Q. What are the debits on the A. G. Harrison

drawing account from December 1, 1905, to date? A. $7,113.62.

Q. What credits appear on the books during the same period? A. Credits amounting to $6,245.04.

Q. What is the net debit balance? A. $868.58.

Q. What do the books show as to the salary drawn or payments made to A. Gould Harrison for the period from October 1, 1909, to December 1, 1909? A. Nine weeks at $20 per week, $180.00.

Q. I show you a resolution dated September 30, 1909, on page 30 of Exhibit C. 1 in this case, which resolution reads as follows:

> Montclair, N. J., September 30, 1909.
>
> At a meeting of the Board of Directors the following business was transacted: The salary of the president and treasurer to be $3,000 each for the ensuing year, commencing October first.
>
> Meeting held at the main office, 25 Grove Street.
>
> (signed) A. Gould Harrison.
> F. K. Fish.

and ask you to what credit A. Gould Harrison would be entitled for that period on the basis of the salary fixed on that minute; the period from October 1, 1909, to December 1, 1909. A. According to these minutes he would be entitled to $250 for two months, $500. He actually received——

Mr. Maxson: I object to the question.

A. He actually received, during that period, pay for nine weeks at $20 per week, which would amount to $180, and that deducted from $500 would leave a difference of $320.

Mr. Maxson: All the latter part of the answer as to deduction on the payments I move be stricken out as not responsive.

Master: Does that affect the debit balance you told us about?

Mr. Wenck: That would reduce the balance of $868.58; it would reduce it $320, if that entry were made.

Master: This entry of $500 does not appear on the books?

Mr. Wenck: No, sir, it does not appear anywhere.

Master: You got that from the minute book?

Mr. Wenck: Yes.

Q. Subsequent to December 1, 1909, what were the monthly payments to A. G. Harrison? A. $250 per month, monthly payments.

Q. What were the monthly payments of F. K. Fish from October 1, 1909, to April 1, 1910?

Mr. Maxson: I object, because this is the account of A. Gould Harrison and has nothing to do with F. K. Fish.

Q. In what accounts were these payments of A. G. Harrison entered? A. You mean $20 per week? They were charged to an account of salaries.

Q. In what account or accounts were the drawing account payments entered? A. You mean drawings? They were charged to A. G. Harrison.

Q. To what account were they credited? A. They were all credited to salary except two items; one of those items was debited to merchandise and the other to Loss and Gain.

Q. What effect would credits to accounts other than salary have? A. They would have the same effect. They would all be to Loss and Gain when the books closed.

Q. This Loss and Gain account was what you might term a clearing account? A. An account into which the income accounts are drained at the close of the fiscal year.

Q. So that the net result is the same whether they all be charged to salary account and drained from that account into Loss and Gain, or whether they be charged to Loss and Gain account direct, or whether they be charged to merchandise account and then drained into the Loss and Gain account. A. The effect was the same, absolutely.

Q. Did you also make an examination of the accounts of the Harrison Milling Co., relative to the acquisition of the fifteen shares of stock by A. Gould Harrison? A. I did.

Q. When was that examination or examinations made? A. It was made in April, 1911.

Q. Did you not also make an examination during this present month, or the month of September? A. Last week.

Q. What do the books show relative to the purchase of these shares of stock by A. Gould Harrison? A. The stub of the check book, September 19, 1906, shows a deposit of the Harrison Milling Co., in the Bank of Montclair, amounting to $2,272.63, included in which amount was a check of "A. Gould Harrison for $2,000." That amount was not entered in the cash book or on any other book except that (indicating) and the bank passbook of Harrison Milling Co.

Q. Did you examine the ledger account of the A. G. Harrison and the Harrison Milling Co. in the Bank of Montclair? A. I did.

Q. What did you find? A. I found that a deposit had been made and credited to the Harrison Milling Co. by the bank and charged to A. Gould Harrison personal account by the bank.

Q. Explain the transaction as appears from the books in the matter of the acquisition of this stock, giving us the entries. A. There is an account in 1906 ledger entitled "E. M. Beyea." Prior to this deposit having been made, that account stood charged with two small items, first an old balance of $41.68; and October 14, 1906, $14.00. (Witness refers to page 323 of cash book): 6 months' interest $14.00. February 18 (cash book 383) shows a debit of $80.00, bonus on 4 shares of stock. On the same date (same page) it shows $552.68, which consists of two items, $462.68, account of stock 15 shares, and $90.00 interest and dividends on bonds, making $552.68. It also shows February 21 (same cash book folio) $1,337.32, consisting of two items I. M. Beyea; one item for $337.32 and another for $1,000, making a total of $1,337.32. The total of all these debits in the E. M. Beyea account is $2,025.68.

Q. What do you find on the credit side of that account? A. I have, under date of February 21, 1907 (cash book 382) a credit of $1,500.00, which is explained on the cash book as being "15 sh. stock to A. G. Harrison a/c ticket on loan $1,500." August 1, 1907, there was an entry made (journal 524) crediting that account with $525.68 for expense and premium on stock, which makes a total of $2,025.68, squaring the account.

Mr. Maxson: I object to witnesses' answer as to squaring the account and move it be stricken from the record.

Q. Do you know in whose handwriting are all these entries? A. So far as I can judge, they are all in the handwriting of Mr. Coleman who was the bookkeeper at that time.

Mr. Maxson: I object to the question; no proper basis be allowed for such a question to this witness.

A. In the handwriting of Mr. Coleman, the bookkeeper.

Q. Where is Mr. Coleman? A. I understand he died the latter part of that year or in 1907, I forget which.

Q. Will you interpret that expression found in the cash book "Account ticket on loan." A. I interpret that to the effect that there must have been a ticket in the drawer for some transaction that was not entered in the cash.

Q. Do you know what Coleman's method was in that respect? A. What he told me, that he had a practice——

Mr. Maxson: I object.

Q. From what you saw. A. I could not say I saw this particular entry.

Q. Do you know what his practice was in the matter of making entries on tickets or slips? A. I know that he had the practice of doing that.

Q. And what was that practice? A. That practice was, when any money was paid out which was not entered in the cash book, he would charge it up against the individual on a ticket; and if any money was received from anyone which he did not enter on the cash book he would credit that individual on a ticket.

Q. How much does the account show as having been spent in the acquisition of this 15 shares of stock? A. You mean the whole of the account, or the checks after the deposit of the $2,000 in the Bank?

Q. After the deposit of $2,000 in the bank. A.

It shows that the total of those checks, afer the deposit was made, amounted to $1,970 exactly.

Q. Referring to the original checks given in this transaction, to whose order do they appear to have been drawn? A. February 16, 1907, check 171, E. M. Beyea $80.00; February 15, 1907, check A., C. F. Hess, cash $462.68; same date, check B., Ida M. Beyea, $90.00; February 21, 1907, check 2886, I. M. Beyea, $337.37; February 21, 1907, check 2887, I. M. Beyea $1,000.00. All these items, added together make $1,970.05.

Q. In your examination of the books of the Harrison Milling Company, did you have occasion, from September, 1906, to March, 1907, to examine as to the over-expenditure of cash? A. I did make a rough review of the cash balances after that check was deposited and which was not entered on the cash book, and I found that the cash book showed that the cash was short, that it was overdrawn, which would not have been the case had the $2,000 been entered on the cash book.

Q. So that cleaned up all the payments on checks used in the closing of the stock transaction? A. Yes, the equilibrium seemed to have been restored after that and there was no longer an over-draft.

Cross examination by Mr. Maxon:

Mr. Maxson: Will you give us again, for this record, the total amount of moneys drawn by A. Gould Harrison between November 18, 1905, and November 30, 1909, for every purpose whatsoever from the treasury of this company?

Mr. Harrison: Objected to as not being proper cross examination. This witness is only testifying to an examination of the per-

sonal account of A. Gould Harrison and it may have been that the box of cigars referred to by Mr. Nasmyth was paid for by A. Gould Harrison, and therefore this question is not within the scope of the inquiry or with the issues raised in the Court of Chancery.

Mr. Harrison: I think, Mr. Master, this should be ruled upon. Here is a very broad question, and asks us to prove their claim. They have shown absolutely nothing, and can show nothing, and now they seek by cross examination of this witness to prove something which they have been unable to prove. Suppose A. Gould Harrison did get a dollar for traveling expenses, suppose he spent $5.00 for a box of cigars; suppose those under the heading of "General Expense" we do not know whether it was spent by him or not and cannot tell.

Mr. Maxson: To amplify the question; I mean what do the books show that A. G. Harrison personally drew out of the treasury of the company, between those dates for every purpose whatsoever, that is to say salary account and overdraft or whatever it might have been?

Mr. Harrison: No objection to that question.

A. With the exception of those twelve days in November, which I did not examine, and was not directed to examine, the drawings charged to him in the drawing account were $7,113.62. He also received weekly salary during the same period amounting to $4,200, as I have already testified, making a total of $11,313.62.

Q. That was all the money shown to have been drawn by him during that period, for every purpose.

A. The first item was drawn. The other was paid him for weekly salary.

Q. I am calling attention to the period from November 18, 1905, and not the first of December, 1905. A. Yes.

Q. Between the 18th of November, when that resolution was passed, to which your attention was drawn on the direct examination, and the first of December, Mr. Harrison drew $450.71 in addition to his salary, did he not? A. I cannot give you those figures because they are not in this ledger, and I did not examine them. Whatever he did draw during that period was included in the $4,552.63 which was credited off and then the account started anew from the first of December.

Q. Then you do know that, in addition to his salary, he drew some amount of money? A. I do not know whether he drew anything during that period.

Q. What do you say? A. I say whatever he might have drawn would have been included in that amount.

Q. Was not your attention directed to this specific circumstance in open court? A. I understand that entry of $4,552.

Mr. Harrison: I suggest counsel refer to the record.

A. As I said here this morning, I understand that cleaned everything up. If Mr. Harrsion between November 18, 1905, and December 1, 1905, drew $450.71 in addition to his salary, that amount must have been added to the amount you have given in answer to my last question?

Mr. Harrison: Objected to as not being within the issues and not being proper cross

examination, and further, it being a hypothetical question for which no basis has been allowed. I think that question entirely improper. This witness has testified that it was all included in that resolution.

Mr. Maxon: It is my misfortune if I make him my own witness.

Master: The answer is probably yes; what difference does it make?

A. Mr. Master, my answer to that is, if it was not proper to include it in the $4,552, then it should be added to the amount I have stated.

Q. Did you give the amount of money Mr. Harrison had drawn out of the treasury for every purpose from November 18, 1905, to November 30? A. I did not consider the 18th of November to the 30th.

Q. Your reply was for the period between the first of December, 1905? A. Yes.

Q. It did not include any drawing income? A. I do not know whether he drew anything from November 18.

Q. In those total credits which you gave on your direct examination of $6,245.04 during that period, did you include the amounts of money which purported to be crossed off his account by those different resolutions in the minute book? A. I included everything the ledger showed.

Q. Does the ledger show whether the credits to A. G. Harrison, during the period, were by virtue of these resolutions, or for the salary account? A. They do not refer to any resolutions so far as I have been able to see.

Q. Did you, in making up your computation, examine the minute books? A. I did not consider

the minute book because I have made no computation.

Q. Did you, in arriving at this total of credit, determine what part of it was salary and what part of it was additional credits based on these minutes?

Mr. Harrison: I think he has already answered the question by saying he did not take the minute book into consideration at all.

A. I did not consider the minute book, but I considered all the credits extra salary except six. They were all extra salary except six items. One was where W. H. D. Horton was debited with $65 for a runabout.

Q. I direct your attention to this statement, marked for identification (1) and ask you, whether in making up that salary account you included the period between November 18, 1905, and December 1, 1909? A. I did.

Q. Then you did examine part of the account? A. This morning, in your presence, because the cash book was here.

Q. Then it is really 209 weeks exclusive of that one week? A. Yes, sir; 210 weeks at $20 a week is $4,200. I said $4,200, and that is based on this additional week which you wanted included.

Q. No, we did not want it included. 209 weeks from December 1, 1905, to November 30, 1909, at $40, Mr. Harrison would have been entitled to draw $8,360, is that not so?

Mr. Harrison: I object to the question.

Mr. Harrison: I withdraw the objection.

Q. Deducting Mr. Harrison's salary at $40 per week for this whole period between December 1, 1905, and November 30, 1909, how much did Mr.

Harrison draw in addition to his salary of $40 per week—— A. I have not it figured that way. I told you what he drew at $20 per week; it was $4,180 cash weekly salary for those 209 weeks, and he drew $7,113.62 in various amounts at various dates.

Q. That included everything he drew for every purpose whatsoever? A. Yes.

Q. Expense account? A. No, I did not examine general expense, because that contains a lot of items paid to various parties; anything charged to expense was expense.

Q. Did it appear in the expense account who had drawn money for expenses? A. I did not examine it.

Q. Did you, anywhere in Mr. Harrison's account, find any charges against him for money drawn for expenses? A. Not in his account.

Q. Did you find any charges for anything besides expense? A. Cash advanced to him and bills paid for him.

Q. Does this $7,113.62 include all the bills that were paid for him or Mrs. Harrison? A. Yes.

Q. Is it good bookkeeping practice, in your opinion as expert accountant, to drain off the salary account into profit and loss?

Mr. Harrison: I object to the question as not being within the issue and being improper cross examination and not within the order of reference. No matter how reprehensible this practice may have been, we are showing the Court what the books show. I respectfully submit the question is grossly improper.

A. Undoubtedly. I consider it the best kind of practice. What else would you drain it into?

Q. What exactly do you mean by draining? A.

Transferring the balance at the end of the year into profit and loss account.

Adjourned until 2 P. M.

Cross examination of Mr. Wenck continued, at 2 P. M.

Q. You have stated it was proper bookkeeping practice to drain the salary account into the profit and loss account; and, in making that answer, do you say it is proper to transfer an individual salary account, during any certain period, to a loss and gain account before the books are balanced? A. I mean to say it is proper. Sometimes it is done before the close of the year; but anything that is considered salary it is proper to transfer to loss and gain account.

Q. So that, if these charges of moneys drawn from the treasury by Mr. Harrison during any period of the year were shown by the loss and gain account, that was proper method of bookkeeping in your opinion? A. Yes; if it was proper to charge it to salary account, it is proper to charge it to profit and loss.

Q. During any period of the year before the books were closed? A. Yes, any time you choose to do it.

Q. When did you make your examination of the books with respect to this alleged loan of $2,000? A. April, 1911, I think.

Q. Was all your examination made previous to the giving of your testimony in this case, on that subject? A. Yes.

Q. Since that time you have not looked at the books? A. I looked at them last week again when I was there. I looked at the books, yes.

Q. Did you prepare some statement of your examination? A. Not as to that examination. I made a statement regarding the salary.

Q. Did you make a report?

Mr. Harrison: Objected to as being entirely immaterial; whether he made a report to him or anyone else, it makes no difference.

A. I made a statement from which those typewritten copies were prepared.

Q. That statement did not include any reference to this alleged loan of $2,000? A. It had nothing to do with it.

Q. These entries, during the time Mr. Coleman was bookkeeper for the company, of Mr. Harrison's withdrawals in the profit and loss account, were made in his handwriting, were they? A. Yes.

Q. All of them? A. I would not like to say that. I did not examine every entry so carefully as that.

Q. You examined the entries in the account showing these credits to A. Gould Harrison based on these minutes, did you?

Mr. Harrison: Objected to as being entirely incompetent. The witness said he had no knowledge as to these minutes. The question framed by Mr. Maxson relates to the minutes entirely. The witness has testified that these credits appearing on the books were made, as far as he knew, without any reference to the minutes at all.

Master: It does not make any difference, Mr. Wenck, whether objections are made to the questions, you will answer every question that is asked.

A. I can only answer that as I did before lunch; that I did not take the minutes into consideration,

nor do any entries refer to the minutes. I mean the entries in the ledger.

Q. You have made some examination of the minute book, have you not? A. I just examined it some, this morning.

Q. You know something about this minute of November 18, 1905? A. I read that, yes.

Q. You know about the subject matter of it? A. Yes.

Q. You made some examination of the books with respect to the amount charged there, did you? A. I know this much; that the ledger credited the amount that is specified here, which is $4,552.63, and that covered all debits on Mr. Harrison's account up to November 30th that year.

Q. Then you made an examination of Mr. Harrison's account to find out it covered all debits? A. Up to the end of November.

Q. How far back did you go in making that examination? A. Not very far. I simply saw the account as ruled off.

Q. During what period did these overdrafts cover? A. I do not know where they began; I do not remember; I did not make a note of it.

Q. How do you know this covered all his overdrafts up to that time? A. Because if I remember correctly, the account was continued from the beginning up to that point and nothing ever been debited to salary or merchandise or loss and gain until that entry was made which was authorized by that minute.

Q. You say you know that minute covered all the overdrafts up to that time? A. It covered the overdrafts of the ledger account up to that time; that is true.

Q. For what period of time? A. As I said be-

fore, I cannot remember how far it goes. I took no interest in the period that account should cover because it was disposed of by this entry.

Q. Why was your attention specifically directed to that minute and not any other in this book? A. This disposes of everything up to that time.

Q. You checked the account up? A. No, I simply verified that account to the end of that period.

Q. Did you, in making your examination of the books of Mr. Harrison's personal account, find credits to him in addition to his salary of $40 per week? A. Yes, I found, as I said this morning, six different credits.

Q. Where did you understand those credits came from?

Mr. Harrison: I object on the ground that it is not a question of the witnesses' understanding, but what the books show.

A. The first entry was for $65, which was for a runabout that Mr. Harrison sold to Mr. Horton, and Harrison Milling Co., instead of collecting it personally, charged it to Horton and credited Harrison; that reduced his drawings to that extent.

Q. That was a personal transaction between Harrison and who? A. W. H. D. Horton.

Q. You found it on the books of the Harrison Milling Co.? A. Yes, it has been collected since and paid.

Q. What is the next entry? A. Cash for a pony Mr. Harrison sold and turned the cash into the company. And the next four items were for petty drawings after November 30th; they are included in that latter part of the account which ends with a balance of $868.58; they are $1.90, $3.25, $1 and .60.

Q. Those were not all the drawings of Mr. Harrison, in addition to his salary, during that period, were they? A. All that the books show; books that show the drawing account.

Q. Then you found nothing on the books showing a credit of Mr. Harrison of September 2, 1907, of $386.74? A. Certainly I did; I saw that here.

Q. That was in addition to his salary, was it not? A. That was extra salary.

Q. I am not asking about extra salary. I am directing your attention all the time to Mr. Harrison's salary authorized by the Board of Directors of the company. You know how much that was, do you? A. No.

Q. It was $40 per week.

Mr. Harrison: I object to giving the witness information and then expecting him to testify from information counsel gives.

Q. Assuming A. Gould Harrison's salary was $40 per week during the period between the first of December, 1905, and the thirtieth day of November, 1909, do you find any credits to him in addition to that salary on the books? A. I have no right to make any assumption at all. I testify to what I have found.

Master: That is what he asked you, whether you found any other credits on the books outside of those salary payments of $40 per week.

A. I did not figure anything on $40 per week. I am trying to explain. I found $20 per week paid him, and these other salary items were credited to this drawing account in lump sum.

Q. In whose handwriting were those credits made on the books? A. I will have to refer to the books.

Q. Refer to the books. A. Item of July 31, 1907, $680.00; August 1, 1907, $1040; in the ledger in Mr. Coleman's handwriting.

Q. In whose handwriting are the original entries in the journal? A. The journal for the first entry is not here for the other two, is here and in the same handwriting.

Q. What other entries do you find there during that period? A. $386.74 in Mr. Coleman's handwriting; that is the third item, $65.00 is in Mr. Coleman's handwriting.

Q. Did you find, in your examination of these books during this period, any original entries in A. Gould Harrison's handwriting in these books? A. None of the entries to which I have had occasion to testify.

Q. None of the credits to Mr. Harrison during that period were in his handwriting? A. Up to this period I have just now testified.

Q. I will refer to the period all the time from the first of December, 1905, and the thirtieth day of November, 1909. A. Here are six entries that were since Mr. Coleman's demise and I should judge them to be in Mr. Tichenor's handwriting, but I rather you would ask him about it.

Q. That does not answer the question. A. What is your question?

Q. During the period from December 1, 1905, to November 30, 1909, did you find any credits to Mr. Harrison in his handwriting, on the books of the Company? A. I did not.

Q. There were none? A. I did not notice these entries since Mr. Coleman's death. I should not think they were in Mr. Harrison's writing and therefore I judge they are in Mr. Tichenor's writing.

Q. Are you prepared to testify that during the

time Mr. Coleman was bookkeeper for the Company, during the period I just called your attention to, there are no entries of credits in the books in Mr. Harrison's handwriting?

Mr. Harrison: I object, on the ground that the question includes all the books of the corporation irrespective of A. Gould Harrison's account, and this witness has not facts as to all the books of account, only as far as A. Gould Harrison's drawings.

Mr. Maxson: I have specifically called his attention to the A. Gould Harrison drawings.

A. I have enumerated all the credits up to that point and none of those are in Mr. Harrison's handwriting.

Q. That does not answer the question. A. There are none.

Q. With respect to this purchase of stock from I. M. Beyea, are there any entries in Mr. Harrison's handwriting in the books? A. The entries in the cash book, journal and ledger concerning the Beyea account are in Mr. Coleman's handwriting.

Q. What charges, specifically, did you ever see made on tickets by Mr. Coleman during the time he was bookkeeper of the Company? A. None.

Q. What credits did you ever see? A. I did not examine any of the tickets of Mr. Coleman.

Q. Then your knowledge of the manner of keeping tickets of credits by Mr. Coleman came from what source? A. From conversation with him.

Mr. Maxson: Then I move that all the testimony with respect to the manner of keeping these tickets be stricken from the record as hearsay, so far as this witness's testimony is concerned.

Mr. Wenck: Mr. Master, may I explain my reply in regard to the practice of keeping tickets?

Master: Yes.

Mr. Wenck: I want to explain the answer I made this morning when I was asked if any money was paid where tickets were kept, or if any money drawn, how were tickets kept.

Q. Do you know any of that except as to conversation with Mr. Coleman? A. I know as to my knowledge in various offices. While I do not approve of that practice, which I do not think commendable, it is done in a great many establishments.

Q. You personally know nothing about it with regard to Harrison Milling Company's books of account except what Mr. Coleman told you? A. And tickets I have seen in the Harrison Milling Company, recently.

Q. But not during Mr. Coleman's time? A. No.

Master: You have seen those tickets during your examination of books there?

Mr. Wenck: Yes; I have no doubt you will find tickets there today if you go there.

Q. What tickets did you find during the time you were examining these books? A. I do not remember.

Q. Were they concerned in A. Gould Harrison's personal account? A. No.

Q. For what purpose did you examine them? A. In order to prove the cash at that date.

Q. Did you prove the cash? A. I did, by taking those tickets into consideration.

Q. You do not remember what the tickets were?

A. They were for loans to employees, drawings, advances on account of salary.

Q. Any credits among the tickets? A. I cannot recall. I do not believe at that particular period there were any credit tickets.

Q. In reaching your conclusion about the amount which is credited with respect to this stock which you said was Two thousand and some odd dollars, did you take into consideration interest payments? A. There were several small payments on account of dividend and interest, as I testified this morning.

Q. How much did those aggregate? A. One of them was $14.00 interest paid to Beyea by Harrison Milling Company. As to the old balance of $41.68, I do not know what that was for.

Q. Was not the $14.00 paid for Mrs. Beyea to Mrs. Mullen? A. I do not know what it was paid to. The cash book shows it was paid to Mrs. Beyea. The cash book says "six months interest M. R. Mullen $14.00.

Q. How do you interpret that entry? A. I would not know how to interpret it; whether interest due to M. R. Mullen or interest due from; it was paid Mrs. Beyea.

Q. Did you find any more entries similar to that, for interest or dividend? A. Yes; $80.00 bonus on four shares of stock.

Q. Did you make any memorandum at the time you were making this examination with respect to these credits of $2,025.68, as to how they were made up? A. Yes; I simply referred to the book from which it was posted after the $1500 credit was made. There was a balance of $525.68 and that was closed by the journal entry.

Q. Of what was that made up beside the $1500 for 15 shares of stock. A. Balance of the account.

The $1500 was par value of the 15 shares. On page 524, $525.68 is credited to E. M. Beyea "expense of prem. on stock $145.68," and "expense prem. on stock $380.00," making a total of $525.68 with the $1500 par, making a total of $2025.68 the amount of the Beyea account.

Q. In coming to a conclusion about this loan matter, you assumed that was a credit to A. Gould Harrison on the books, did you? A. I assumed that was on account of the $2000 he had advanced.

Q. Where, on the books, did you find that amount of $2025.68 balance against this alleged loan of $2000? A. Page 382, the $1500 entry shows, credit I. M. Beyea 15 shares stock to A. Gould Harrison account ticket on loan.

Q. That entry you now have before you in the book, have you? A. Yes.

Q. Was that entry all made at one time? A. I would not be able to tell you that, but it looks as if it was; it is all in one handwriting.

Q. That accounts, in your opinion, for $1500 of the money as a credit to A. Gould Harrison? A. Yes.

Q. Where did you find entries to account for $525.68? A. That is the difference of what was paid and the value of that stock.

Q. You have said the entries in Mrs. Beyea's account, in your opinion, was a credit to A. Gould Harrison for this alleged loan of $2000, have you not? A. No, I did not say anything of the kind.

Q. Did you say that part of those entries show credit of A. Gould Harrison? A. I said $1500 referred to a ticket account of loan, and that was *prima facie* evidence there was a ticket in existence. I say now as I said before the Vice-Chancellor that was *prima facie* evidence there was a ticket in evidence.

Mr. Harrison: I move that be stricken out.

A. That reduced the $2000 ticket to $500.

Q. Where, on the books, is the additional $500 shown as a credit to A. Gould Harrison? A. No where. The ticket is no longer in existence, and the assumption is fair that Mr. Harrison knew enough to take out $500 for what he loaned and what he was credited with.

Q. You assume he did take that much out, do you, without it appearing on the books of the Company? A. Certainly, that is the practice of ticket bookkeeping.

Q. It would not show anywhere in the cash of the Company? A. No; no more than the $2000 would show. That did not show on these books; it showed when it was put in the bank.

Q. So you can account for $1500 had by this certain item, and you assume A. Gould Harrison took $500 in addition? A. Yes; he may not have done it all at once.

Q. And without making any entry of any kind in the books? A. Except on the ticket.

Q. Do you assume this 15 shares of stock E. M. Beyea to A. Gould Harrison on the ticket showed loan of A. Gould Harrison to the Company? A. Yes.

Q. That is the way you arrived at that conclusion? A. Yes; the assumption was very fair, too.

Q. And without seeing the ticket? A. Yes, I could see it done without seeing the ticket.

Q. Without seeing any of the tickets during the time Mr. Coleman was keeping the books? A. Could not do anything else; if he did not his books would not be in balance.

Q. Were his books in balance? A. They were.

Q. I thought you said the cash was overdrawn at that period. A. They were in balance.

Q. How long had the cash continued to be overdrawn? A. From the date the $2000 was deposited in the Bank of Montclair and the last payments made here on account of that stock, September 19, 1906, and February 21, 1907.

Q. During all that period there was an over-expenditure of cash? A. So the cash book showed.

Q. You did not check off that period? A. As I said, on March 1st the equilibrium was restored.

Q. What was the date of the last? A. February 21, 1907. I will give you a demonstration of the over-expenditure of cash: In order to know how this balance was arrived at, we would have to go to the tickets in the drawer. The first would be $2000 ticket. The other tickets that were in existence then are not in existence now.

Q. There must have been other items. A. Half a dozen.

Q. There were tickets in the drawer aggregating that much money, tickets showing the Company owed some individuals $2300? A. Yes.

Q. Nothing on the books to show to whom the Company was indebted to for that sum? A. No.

Master: On this date of September 29, 1906, the Company had spent, according to these cash tickets, $2300 more than it had?

Mr. Wenck: Yes, but we know it had $2000 in the bank which was not entered in the cash book. I proved to you there was $2000 deposited in the bank.

Q. You have assumed, because you know that $2000 was deposited in the bank which was not in the cash book, that it is part of that overdraft? A. Yes.

Q. That $2000 could not have been drawn out for any other purpose? A. Evidently it was expended, that is the money in the bank was expended for all these purposes here and in relation to the purchase of stock. I suppose they had it in the bank and I suppose they used it, when necessary, to pay bills.

Q. You have made the same assumption with respect to $2000, which you know was put in the bank, as with the $300 you know nothing about? A. I cannot explain the difference, how it is arrived at, as I told you. I am not a mind reader.

Q. That assumption relates also to the $500 in excess of the $1500 for the stock? A. I know this; if the $500 had not been withdrawn by A. Gould Harrison, in addition to the $1500 which was credited to him, it would be there now or the cash would be out of balance $500.

Q. How about $300? A. That disappeared too; that is, disappeared as far as the tickets are concerned.

Q. You assume there was a ticket there of $300 indebtedness of someone, which have since been paid, and nothing on the books to show how they were paid or to whom they were paid? A. That is correct.

Master: Can you demonstrate to me, from the cash book, at a time after $1500 of the $2000 had been paid to Mrs. Beyea and the balance of $500 of the $2000 alleged loan had gone back to A. Gould Harrison, how the cash of the Company balanced?

Mr. Wenck: That credit of $1500 of Beyea was made on the 21st of February, 1907. At the end of that month instead of being overdrawn the Company had $761.73 on hand.

Q. Where did the $700 come from? A. That came from the receipts of that month less the disbursements of that month.

Q. Did you find along that time, or just prior, there was a note of $2000 discounted by the bank for the Company's purposes? A. I cannot recall a transaction of that kind. My examination did not render that necessary.

Q. That was not part of the examination, the cash of the Company? A. When it became cash it appeared on the books.

Q. Did you find it? A. I did not have occasion to examine it.

Q. You did not examine items in the cash book which went to make up these credits? A. No.

Q. You simply assumed, because of this custom of keeping tickets you knew about with respect to other items, these things were all on the tickets? A. I mean there was a $2000 ticket which ought to be in there.

Q. You know there was a $2000 for what reason? A. Because $2000 deposited in the bank which had been received by Mr. Harrison with which he had not been credited, nor anyone else.

Q. It must have appeared on the books of the Company or these tickets? It could not have been drawn out the same as the $500? A. No, the ticket would have been in existence.

Q. Is the ticket in evidence? A. No, not now.

Q. Why could not Mr. Harrison have paid himself the $2000 he deposited, in the same way he paid the $500? A. If he had, this would make this charge for $1500 afterwards then you would really be $1500 short.

Q. Is not that so with respect to $800 which is another expense there? There was $2300 over, was

there not? A. He drew $800 out and charged himself with it. You are talking about the drawing account.

Q. No, I am talking about the $500 that was paid to Beyea and others by checks which we have produced. I am talking about the $2300 which was over-expended in the cash. A. I did not know who was interested in that other ticket; whether it was A. Gould Harrison or somebody else.

Q. Is there any reason in your opinion why Mr. Harrison could not just as well have paid himself the whole $2000 as he did the $500, which you assume he did pay himself? A. You could not spend $2300 more than you received unless you had it in the bank, could you? How would you do it?

Q. Might have had it in the safe. There was $2000 put in the bank that did not show on the books. How about the $300 which was put in the bank? A. I do not know about that.

Q. If you could not spend $2000 which was put in the bank, how could you spend $300 which was not put in the bank? A. Must have gotten it from somewhere.

Q. What was done with it? A. Put in the bank eventually.

Q. Your opinion is based on these certain facts you have given us here today and nothing else, is it? A. Yes.

Q. Is it good bookkeeping practice to give yourself a credit on the books such as that $1500?

Mr. Harrison: I object on the ground that it is entirely immaterial.

A. I said I did not commend that sort of bookkeeping on tickets; I am not responsible for it.

Mr. Harrison: I object to the form of that question, as it implies that A. Gould Harrison

made that entry himself and witness has testified that entry was made by Mr. Coleman.

Master: Is it good bookkeeping practice for Mr. Coleman to do it?

Mr. Wenck: No, but in view of his having made the ticket he could not do anything else.

Q. You have testified that the equilibrium seemed to have been restored with respect to the $2000 at the end of February, 1907. You said March 1st, in your direct examination. A. Yes.

Q. In concluding that the equilibrium was restored, you did not take in account any payment of $300 to anyone, did you? A. I had nothing to do with that. If there was a ticket for $300 there, it simply would have reduced it $300 if it was still in existence.

Q. You examined A. Gould Harrison's account down to date, didn't you? A. It is right here in the ledger and I have testified to the facts twice this morning.

Q. Did you get up a statement of the results of your examination of the books? How much money did Mr. Harrison draw from the Company during the whole period from the first of December, 1905, when your examination started, down to the time your examination ended? A. Total drawing account $7113.62.

Master: What has he drawn in salaries since December 1, 1905?

Mr. Maxson: I want to get the total amount of moneys drawn by A. Gould Harrison as treasurer of Harrison Milling Company, for salary, and for other purposes.

Master: So do I, but do not think he can give it to us in bulk. What has he received in

salaries from December 1st, up to November 30, 1909?

Mr. Wenck: $4180.

Q. He has drawn nothing in excess of his salary? Is that a fact? A. That is $20.00 per week.

Master: This witness has testified there are two accounts in the books which show drawings by A. Gould Harrison; one is A. Gould Harrison account, and the other is embodied in the salary account. The total of the A. Gould Harrison account from December 1, 1905, to August 24, 1911, is $7113.62. The total of salaries, which I suppose he has picked out from the salary account for the period from December 1, 1905, to November 30, 1909, is $4180. Added to that is $20.00 for the week prior to December 1, 1905.

Statements showing the above amounts are offered in evidence and mraked Exhibit A, Exhib B, and Exhibit C (which latter Exhibit is a detailed statement of Exhibit A.)

Master: Do you know of any other cash that has gone from the treasury of the Harrison Milling Company to A. Gould Harrison?

Mr. Wenck: I did not examine anything paid to him on account of expenses any more than I did to anyone else.

Q. Have you examined the account of A. Gould Harrison from August 24, 1911, to date? A. There is nothing in the drawing account since.

Q. Do you know of any salaries paid to A. Gould Harrison from November 30, 1909, to date? A. Since then he has been paid $250 per month, in monthly payments.

Q. So that, when I asked you for the total draw-

ings for all purposes made by Mr. Harrison from the treasury of the Company from November 30, 1905, down to date, you gave them down to August, 1911, because the account stopped there in the book? A. Yes, and because of another reason. There were four items entered in the debits of 1909 that have been repaid during this 1911 period; so that, practically, the drawings up to the same period we are speaking of as to salary are $868.58.

Q. $868.58 is overdrawn by A. Gould Harrison? A. Yes.

Q. Does your examination of the books show why A. Gould Harrison was given credit for $250 per month by the bookkeeper from the time of this resolution to which witness's attention was directed on his direct examination, from December 1, 1909?

Mr. Harrison: He testified this morning that he did not take his drawings during October and November.

A. After December he was paid $250.

Q. Do the books show that the bookkeeper gave him credit for $250 on the books? A. No. The cash books shows, December, 1909, he was paid $250. January, 1910, $250. February, 1910, $250. March, 1910, nothing was paid. April, 1910, $250 was paid on account of March. May, 1910, nothing was paid. June, 1910, nothing was paid. July, 1910, nothing was paid. August, 1910, $250 was paid. And thereafter, as far as I have looked, $250 per month was paid.

Q. Then it was not the custom of the bookkeeper, on the first of the month, or on any certain day of each month, to give Mr. Harrison or Mr. Fish credit for $250 on the books? A. No, it was paid out of the cash during the month.

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Q. They took the money out of the cash sometime during the month, and when they took it the bookkeeper gave them credit for it? A. No, the bookkeeper charged it to salary.

Q. He did not, the first of each month, give these two officers of the Company credit for $250 on any account? A. No, as far as I have examined.

Q. You assumed, in giving your direct examination today, that, because Mr. Harrison did not draw his $250 a month, in October and November, there was a credit coming to him, didn't you? A. No; I was asked to state what was the difference between what he should have been paid and what he received for those two months, that would have been $500.

Q. Didn't he draw any salary during those two months? A. Yes, $20 per week for 9 weeks, which was $180.

Q. If any credit was coming to him at all, the salary he was to draw would be deducted from it? A. Yes.

Q. You would not expect him to be paid $250 per month on one resolution and $20 per week on another? I only want to get on this record what you mean. A. I am telling you what I mean; that is the difference between the two things. It is for someone else to say what he had.

Q. You did not intend, in your direct examination, to mean the fact that he was entitled to a $500 credit? A. I am not fixing his salary, or Mr. Fish's either.

Q. You did not make any examination of that period from the 18th of November and the first of December, 1905? A. Simply at the end of the period to see whether the balance on that account was included in that entry of $4552. The books are here now if you would like to look at them.

The books are referred to.

Q. Between the 18th of November, 1905, and the first of December, on the drawing account, how much money did A. Gould Harrison get from the treasury of the Company, both by way of salary and any other way, as shown by the books. A. In the first place, after the 18th of November he received $20 salary cash.

Q. Between the 18th of November and the 1st of December, 1905, how much do the books show? A. A. Gould Harrison account shows $20.00 a week salary, and net drawings of $439.46, making a total of $459.46. This $439.46 is included in this resolution.

Q. In making your examination of these books, did you find debits to Mr. Harrison in different accounts beside salary account.

Mr. Harrison: There was only one account with Mr. Harrison and that was this drawing account. The other items paid to Mr. Harrison for salary simply appeared in his name on the cash book together with other names for each week. That was posted to the debit of salary.

Q. I mean charges to Mr. Harrison for drawings from the Company; were there any more than one account? A. No charges of Mr. Harrison other than this drawing account.

Q. In no other account of the Company? A. No charges to Mr. Harrison outside of this drawing account.

Q. You examined the books, you say? A. Yes. There was no account with him except the drawing account.

Q. Didn't you find any charges to Mr. Harrison

in the merchandise account? A. If there were any purchases of merchandise they would have been charged to this drawing account.

Q. There were three accounts, were there not, in which there were charges to Mr. Harrison; one Loss and Gain; another, Merchandise Account; and another his personal account, A. Gould Harrison account? A. Those were credits to A. Gould Harrison and debits to those accounts.

Q. Did you examine those three during the period you examined the books? A. Only so far as they related to his account. Those items I have referred to were credited to him and charged to three different accounts.

Q. Did you come up to date with respect to the account of the Company in any way for this year? A. No, I did not.

Redirect examination by Mr. Harrison:

Q. In your examination before the Vice-Chancellor March 19, 1913, you were asked, under cross examination, "But you did see the tickets?" to which you made reply, "I did in passing the office; I would chat with Mr. Coleman and then he would tell me about the tickets. I did not examine any tickets, but I saw the tickets." You were further asked "Where did you see them?" and you answered "In his hands when we were talking; he explained to me what use he made of the tickets." I now ask you, what have you to say at the present time, as to your knowledge of the ticket practice at the Harrison Milling Company?

Mr. Maxson: I object on the ground that anything witness knows about it is based on hearsay.

A. It was the practice of Mr. Coleman, the bookkeeper, to have tickets on which he would enter

credits for amounts received from individuals, and on other tickets debits for amounts paid.

Q. Did you actually see tickets of the Company, as you testified you did in this examination? A. Not so I read any items on the tickets.

Q. Did you actually see tickets with debit and credit entries? A. Yes.

Q. The details of which you know anything about? A. No.

Q. In whose handwriting is the entry in the stub of the check book under date of September 19, 1906, which entry includes a deposit item which reads as follows: "A. G. Harrison, $2000." A. Mr. Coleman's.

Q. I call your attention to entry in the same check book, February 15, 1907, "C. F. Hess, cashier, a/c 19 shares stock $462.68"; also entry "Ida M. Beyea, E. M. B. 4 shares, Ida M. Beyea 15 shares, total 19," and ask you in whose handwriting those entries are? A. Mr. Coleman's.

Master: These entries are on the stub of the checks drawn for the payment of the amounts that show on the Ida M. Beyea account?

Mr. Wenck: Yes, they are drawn on the Bank of Montclair, on account of Ida M. Beyea.

Q. Do these amounts correspond with the amounts set out in checks marked Exhibit C. 5 and C. 6? A. Yes.

Q. In the stub of the check book under date of February 21, 1907, is "Ida M. Beyea balance due on stock $1000," and the check stub is 2887, check being known as Exhibit C. 7. Is that amount the amount which appears on the Beyea account, which you previously testified? A. Yes.

Q. I call your attention, also, to an entry in the

stub, immediately preceding the entry you have just testified, check 2886, February 21, 1907, Ida M. Beyea account 15 shares stock Harrison Milling Company, $337.32, and ask you if that amount corresponds with the amount shown on Exhibit C. 4, being check 2886 of the Harrison Milling Company? A. Yes.

Q. Is that amount carried to I. M. Beyea account in the cash book and ledger of the corporation? A. Yes.

Q. Check stub, Montclair Trust Company, February 16, 1907, E. M. Beyea bonus 4 shares stock $80.00, check 171; does that correspond with the check which you now hold in your hands, bearing the same number? A. Yes.

Q. Is that amount carried in the cash book and ledger of the Beyea account? A. Yes.

Q. In whose handwriting is the entry on stub 2886 and stub 2887 made? A. I should say it was A. Gould Harrison's.

Q. In whose handwriting is the entry on stub for the $80 check 171 to the Montclair Trust Company? A. A. Gould Harrison's.

Adjourned until October 9th, 1914, 10 A. M.

Further testimony taken this ninth day of October, 1914, at 10 A. M.

SAMUEL WENCK recalled.

Redirect examination by Mr. Harrison:

Q. The A. Gould Harrison account, between November 18, 1905, and December 1, 1905, is charged with the following items:

November 21, which refers to page 468 of the journal, which has not been produced this morning $170.73

November 28, which refers to page 177 of the cash book, where the following entry appears: A. G. H. "W. K. Hunt, Coll." 6.48

November 28, which also refers to page 177 of the cash book, where the following debit is found: A. G. H. "C. V. Harrison 45.00

November 28, which also refers to page 177 of the cash book, where a charge is made to "range" 33.50

November 29, which also refers to page 177 of the cash book, where the following entry is found, A. G. H..... 195.00

I also find a credit entry under the date of November 23, 1905, which refers to page 469 of the journal which has not been produced 11.25

I find that the net amount of the withdrawals between November 18, 1905, and December 1, 1905, is $439.46. Can you tell, Mr. Wenck, whether the net debit is included in the credit made on the ledger under date of March 31, 1906, of $4552.63? A. It is.

Master: That is the amount named in the resolution of November 18, 1905, is it not?

Mr. Wenck: Yes, sir.

Q. Can you give any reason or explanation of the acquisition of that $439.46 item in the resolution and in the credit, when the resolution is dated sometime before the actual withdrawals are made?

Mr. Maxson: I object to the form of the question as calling for the witness's opinion

without stating a hypothetical state of facts upon which an opinion can be based.

A. My opinion is, in view of the fact that the journal entry crediting that amount was not made until March, 1906, that the date of that resolution is entered wrong in the minute book. I think the testimony——

Q. I want you to give your opinion. A. I can only infer it must have been dated wrong in view of that fact.

Q. Would the slip practice to which you have testified be an element which you would consider in making up your opinion?

Mr. Maxson: I object to any testimony as to slip practice as immaterial.

A. I do not believe the slips would cut any figure in that matter for the fact that those withdrawals were two different dates and were between November 18th and 30th. At least they are so entered in the cash book.

Recross by Mr. Maxson:

Q. You are quite positive, are you, that Mr. Harrison did not draw his salary for the months of October and November, 1909? A. I said he drew $20 per week during those nine weeks; he drew $180.

Q. According to your testimony, you gave A. Gould Harrison credit for the difference between $180, which the books show that he drew, and $500; that is, a salary at the rate of $250 per month for the two months. Is that not so? A. Yes.

Q. So, according to your figures, Mr. Harrison had credit there of $320? A. Yes; as he drew $180, and he was entitled to $250 per month for

those two months, why he would be entitled to a credit of $320 if the salary was $250 per month.

Q. There is no question about that? A. No.

Q. Have you taken those totals from the books; the amount of moneys drawn? A. Yes, every item that shows on those exhibits. Would you like to see how they are arrived at?

Witness shows Exhibits A, B and C to counsel.

Q. You have not taken the totals, have you, of that salary account for the whole term? A. I made the total.

Q. What is the total as shown on Exhibit A you have? A. $4,000 for 200 weeks and $180 for 9 weeks. I have since credited the amount of $20 for the time between November 18th and 30th, which would make it $4,200.

Q. That would make $4,200 drawn from between November 18, 1905, and November 27, 1909? A. Yes.

Q. I show you a statement prepared by Mr. Nasmyth for me, and ask you whether it is accurate with the exception of the fact that $180 should be added to the first total there of drawings? That is to say, to the sum of $26,104.33, there should be added $180 for the salary during the two months, October and November, 1909, which you say A. Gould Harrison did draw?

Mr. Harrison: I object to the question based upon this statement because no testimony has been given pertaining to the question of validity of the resolution of September 30, 1909, fixing the salary of the president and treasurer at the rate of $3,000 a year, and I call the attention of the Master to the fact that the

authority of that resolution has never been questioned. Mr. Nasmyth's statement should not be proved by another witness; that should be brought out by the expert accountant himself.

Master: I think you better put it in by your own witness, Mr. Maxson.

Mr. Harrison: Cross examine him on his own testimony, not what Mr. Nasmyth might testify to. This is most unusual.

A. It does not agree with my statement.

Q. It is inaccurate, is it?

Mr. Harrison: I object.

Q. Is it accurate? A. It does not agree with my statement.

Q. Is it accurate, or not? A. The first two items do not agree with the items I prepared.

Q. Is the statement accurate or inaccurate?

Mr. Harrison: It is not proper cross examination.

Master: That will all appear when the matter goes before the Vice Chancellor.

Mr. Harrison: I think the Master can with all safety make a ruling.

Master: Mr. Nasmyth has taken from one date, and Mr. Wenck from another.

Mr. Harrison: Why cannot we, Mr. Master, get the testimony in the proper way? Mr. Nasmyth can put his testimony in and we can cross examine him on that.

Mr. Maxson: I must be permitted to do this in my own way.

A. The first two items are accurate if you take into consideration items I did not include in my

statement. As to the second item, Mr. Nasmyth seems to have credited him two weeks more than I have. I only make one more week in my statement and he makes two. That may be due to the fact that he has considered one lap-over week, which has not been paid, between November 18th and 30th. It was not paid until the next month. There was one payment of December 2nd, if I remember correctly.

Master: The total withdrawals shown on your statement is $7,113.62?

Mr. Wenck: Yes.

Master: If you added to that sum the items which you testified to first this morning as having been drawn between November 18th, 1905, and December 1st, you will arrive at the same total as Mr. Nasmyth, will you not?

Mr. Wenck: Yes.

Master: Now, the salary for 202 weeks at $20 a week would be $4,040?

Mr. Wenck: Yes, if he drew it.

Master: According to your statement, you did not find he drew $20 a week for 202 weeks?

Mr. Wenck: Deducting that week from November 18th to 30th, he drew 201 weeks. The cash book does not show but one week during that period. There are two weeks in that period the cash book shows for withdrawals and one week at $20.

Master: The third item on Mr. Nasmyth's statement, $14,500, is that calculated correctly, $250 per month for 4 years and 10 months?

Mr. Wenck: Yes.

Mr. Nasmyth's statement, above referred to, marked for identification.

Master: In your statement you have made

no calculation of the salaries drawn at the rate of $250 per month, have you?

Mr. Wenck: No, sir, in neither of them.

Q. Will you examine the credits and see whether Mr. Nasmyth's calculation is accurate as to the credits on the basis shown on that paper before you?

Mr. Harrison: I object to the use of this method of examination. I am entitled to the benefit of cross examination of the expert accountant who prepared it.

A. I do not know.

Q. If it is inaccurate, will you point out any inaccuracy— A. I have not had time to figure it.

Mr. Harrison: Will it take you considerable time to figure it?

Master: I could figure that.

Mr. Wenck: Yes; let the Master figure it. I am simply testifying to what the books show.

Mr. Maxson: Did you get an answer, Mr. Harrison, as to the length of time it would take to figure it out?

Mr. Harrison: I withdraw the question.

Master: You have a statement, Mr. Wenck, on which you calculated week by week. I should like to have it.

Mr. Wenck: That is figured to 1909 as I took it from the cash book, item by item.

Mr. Harrison: I object to the use, by the Master, of the statement marked for identification, on the ground that it has not been properly introduced in evidence by the witness who prepared it, and that the defendants have not had an opportunity for cross examination as to the method of preparation or its accuracy.

Mr. Maxson offers in evidence statement previously offered for identification, made by Mr. Nasmyth.

Mr. Harrison: I object to the offering of that instrument in evidence unless it is properly produced and proved; that the mere tender by counsel of a statement in evidence is not sufficient proof of such paper. I have a perfect right to examine it before it goes into evidence.

Mr. Maxson: I do not think the objection is good. If you will produce the statement I will put the witness on the stand.

MR. NASMYTH recalled.

Examination by Mr. Maxson:

Q. You made up for me an original memorandum, in your own handwriting, showing the total amount of moneys taken from the treasury of the Harrison Milling Co. by A. Gould Harrison, one of the defendants, and also giving him credit on the same memorandum for $40 per week for the period between November 18, 1905, and September 30, 1914? A. Purely on the basis of $40 per week; yes.

Q. Were there some credits to be added to the credit side and debits to be added to the debit side? A. There are a few. There is that $180 to be charged for the 9 weeks at $20 per week during the months of October and November, 1909; and there are additional credits to be given for small credits already appearing on the lump sum aggregating $133.

Q. What difference does that make in the figures? A. $47.

Charles J. Nasmyth—By Master—Direct

Mr. Harrison: I move that be stricken out on the ground that no testimony as to actual figures can be given until the admissibility of the statement is permitted by the Master.

Q. Then that $47 is to be added to the total of charges, making them how much?

Mr. Harrison: I object on the ground that he cannot testify from the statement until it has been properly introduced into evidence. I think, if the Master please, it is very important that this complainant cannot prove any of the accounts and statements unless their admissibility is shown, their relevancy is shown. He cannot produce, for instance, a deed from John Jones to Benjamin Smith for the property on the southerly side of Broad Street, or a statement of account of O. Connolly & Co., against one of their employees. The admissibility of this statement must be passed upon by the Master and shown that it is properly prepared by this expert accountant. I ask, before any testimony is given, that I be given an opportunity to cross examine the witness as to the method of the preparation of the statement, whether or not it is taken from the books, or whether it is a mere computation of the witness, before any questions are asked relative to the statement itself.

Master: I think that is quite proper.

A. $26,151.33.

Mr. Maxson: I offer the statement in evidence.

Statement of Mr. Nasmyth above referred to offered in evidence and marked Exhibit D.

Cross examination by Mr. Harrison:

Q. How did you arrive at this first item of $7,564.33? A. I arrived at it by totalling the charges shown on the ledgers of A. Gould Harrison's personal account from November 18, 1905, up to the present time, although for some years it appears to have been broken.

Q. So that you included in this amount the sum of $450.71? A. Yes, showing charge to A. Gould Harrison between November 18, 1905, to December 1, 1905.

Q. Does that item also include the credits to A. Gould Harrison which appear on the books for that period? A. That item does not take any credit to account.

Q. There are a number of credits that appear that period? A. Not affecting the $450. As affecting the whole total, yes. There is one item of $11.25 which appears to have been credited under date of November 23, 1905.

Q. Your second item of $4,040, how did you arrive at that? A. I arrived at that by computing the number of weeks between November 18, 1905, and September 30, 1909, and multiplying those weeks by $20.

Q. You did not, however, examine the books to determine whether drawings were made at the rate of $20 per week during this whole period? A. No; the only examination of the books I made was in 1910 on the occasion of my first examination when I sought to ascertain the method by which A. Gould Harrison had withdrawn his original salary of $20 per week; and my examination only went to the extent of a test to demonstrate that $20 had always been included in the weekly payroll and paid to Mr. Harrison.

Q. So that test did not cover the payments each week during that period, but merely sample weeks so to speak? A. Weeks selected at random.

Q. So that the item of $4,040 is an item based not upon your examination of the books, but upon a mathematical calculation which you have made? A. It is on the exact number of weeks included in that period.

Q. The next item of $14,500. Was that taken from actual examination, or is that also a mathematical calculation? A. That is the same kind of calculation, based on $250 per month from December 1, 1909, to September 30, 1914, excluding 2 months which I have understood Mr. Harrison did not draw the $250 immediately after the authorization of establishing that figure of $250. Those were the months of October and November, 1909.

Q. So that, so far as your examination of the books go, A. Gould Harrison may have drawn for one or more months of this period amounts either less or greater than $250? A. This has no relation to what he actually drew, but what he was entitled to draw if the resolution was valid at all.

Q. Then this is based upon your theory of what he would have drawn had he drawn at this rate for each week during this period upon the assumption that the resolution of September 30, 1909, is valid ? A. Yes, it is no theory as to what he would have drawn on the basis of $250 per month.

Q. You have not determined from the books exactly what the books show as to his withdrawals, have you? A. No; so far as his salary goes, $250 per month.

Mr. Harirson: Mr. Maxson, do you offer the whole statement in evidence?

Mr. Maxson: No, not all of it. I offer everything except the comments in red ink thereon by the expert.

Q. This credit item of $18,453.33 has no relevancy to, or is not connected in any way with, the books of the defendant corporation, has it?

Mr. Maxson: I object to the form of the question.

A. No.

Q. That amount is merely the result of a computation by you based upon a theory which you have assumed, is it not? A. Based upon information that was given me, that he was entitled to draw $40 per week.

Q. Did you find, in your examination of these books, other credits which do not appear upon this statement of yours? A. A few, yes.

Q. Are there not also some major credits? A. Yes, based on resolutions.

Q. Why do you say "based upon resolutions"? A. Supported by resolutions, then.

Q. Are all of them supported by resolutions? A. All but one I know of.

Q. Might not these credits be also based upon testimony in this case to the effect that the directors and stockholders consented to this withdrawal, or upon some other theory or facts with which you have not been acquainted?

Mr. Maxson: I object to the form of the question, as calling for the witness' conclusion as to legal effect of testimony given in this case.

A. They might be. I am not theorizing if I can help it.

Mr. Harrison: I object to the receipt of this statement in evidence on the ground that it is incompetent, immaterial and irrelevant and as shown by the witness, who appears to have made it, it was not taken from the books, but is merely arrived at as the result of assumptions which he has made from tests made of the books and what he has gathered from other sources, some of which are hearsay.

Master: I will receive the offer in evidence for what it might be worth, as explained by the maker of the document.

Mr. Maxson: The total drawing Mr. Nasmyth shown here, according to your testimony, to be $26,151.33, does not include the moneys drawn by A. Gould Harrison for expenses and miscellaneous items?

Mr. Nasmyth: No.

Master: Please explain to me the $47 item.

Mr. Nasmyth: The $47 is arrived at by making an additional charge to A. Gould Harrison which is not included in my statement of $180, representing $20 a week for 9 weeks between October 1 and November 30, 1909, and giving him additional credits that are not included in my statement for items shown on the first ledger account, aggregating $133 between November 21, 1905, and August 23, 1911.

Q. If it should appear from the books that Mr. Harrison failed to draw his salary, either of $20 per week or of $250 per month for a longer period he would be entitled to still further credits, would he not?

Mr. Maxson: Objected to as calling for the

witness to determine the fact. It is for the Court to determine.

A. Not on the basis of my statement, because it only takes into account the credits which we have just mentioned. $40 is only taken into account and has no reference to the $250 or any other.

Q. So that whether he drew the money or not, this statement should stand as the amount of his debit charged against him? A. On the basis of $40 you mean?

Q. I am asking you now as to how much credit, if any, A. Gould Harrison is entitled to if it appears from the books that he did not draw the salaries to which you think he was entitled to, and upon which you have made your computation during any portion of that period. A. Yes; if he did not draw any of it he would be entitled to an additional credit as far as he is concerned.

Q. But not so far as your computation is concerned? A. No.

Q. Why is that? A. Because it is claimed——

Q. Never mind that it is claimed. A. It is based on the claim that he is only entitled to have drawn $40 per week for the periods mentioned and that $40 per week I have taken into account from the beginning of the period up to the first of this month.

Q. Even on your theory, would not the amount which he still owes the corporation be determined in part by what he had actually drawn? A. Certainly. We agree on the figures he has actually drawn.

Q. Can you state, as a fact, that he drew his salary of $250 per month from December 1, 1909, to September 30, 1914? A. No, sir, I could not without verifying it by the books.

Q. So if it appeared from the books that he did not actually draw at that rate he would then be entitled to a credit? A. No; he would be entitled to draw it. He would not be entitled to any further credit on my statement.

Q. In your opinion he might still go to the corporation on the theory that amount of money was still owing to him? A. If it is shown on the books he did not draw all those shown in my statement.

Q. As a matter of conclusion, is there any difference whether he is now entitled to go to the corporation and take out at a certain rate for a certain period, or whether he is entitled to a credit on your statement? Is there any substantial difference? A. No, whatever he is entitled to, he is entitled to.

Q. He would be entitled to it on your statement? A. Yes, on the basis that the statement is computed.

Q. So that, if it appears that A. Gould Harrison did not draw his salary of $250 per month for the months of October and November, 1909, and the months of April, May, June and July, 1910, he would be entitled to a credit of $1,500? A. No, sir; I have already taken into account the first two months you mention. The last four I have taken no account of. Therefore he would be entitled to have $1,000 stricken out of that $14,500 item.

MR. WENCK recalled by the Master:

Q. I show you the account of A. Gould Harrison in the ledger of the company for 1905 and ask you the basis for the credit of $4,552.63 under date of March 31, 1906? A. It represents the net drawings from the beginning to November 30, 1905.

Q. What is the basis for giving Mr. Harrison that credit? A. The basis is the resolution in the minute book dated November 18, 1905, which quotes the amount $4,552.63.

Mr. Maxson: When you say "from the beginning," what do you mean by that?

Mr. Wenck: It represents from the beginning of the corporation.

Q. Now I show you the account of A. Gould Harrison in the ledger of the company for 1906, and under date of July 31, a credit for $680. What is the basis for that credit? A. Mr. Nasmyth answers: Salary drawings at the rate of $20 per week computed by the bookkeeper from December 1, 1905, to August 1, 1906.

Mr. Wenck answers: In making that entry he omitted two weeks. The rate per week is $20. During that time there were 36 weeks and the bookkeeper computed it as 34 weeks.

Mr. Maxson: He drew $20 per week right along on the payroll, and he drew what has been known in this case as $20 per week extra salary and charged in the drawing acount.

Q. I show you an item of August 1, 1907, of $1,040. A. That is extra salary from August 1, 1906, to August 1, 1907.

Q. Is that calculated properly? A. Yes.

Q. I show you an item September 25, 1907, $386.74. What is the basis for that credit? A. Resolution dated September 2, 1907.

Q. November 30, 1907, a credit of $65. What is that? A. Is for a debit to Wm. H. D. Horton for a runabout sold by Mr. Harrison.

Q. I show you a credit dated July 30, 1908, for

$2,016.55. What is the basis for that? Answered by Mr. Nasmyth: Journal entry, 245, giving credit for the exact debit balance of that amount to bring the account into balance up to date which is July 31, 1908.

Q. Is there any authority for the charging off of the balance of the account to that date, that you know of? A. (Mr. Nasmyth.) I judge the resolution dated September 8, 1908, is the authority.

Q. What is the credit of February 1, 1909, $50? A. Cash received for the sale of a pony belonging to A. G. Harrison; the company received the cash.

Q. I call your attention to a credit entry of $2,000 under date of July 31, 1909, and ask you what is the basis of that? Does that credit balance the account of A. Gould Harrison to date? A. To July 31, 1909.

Q. Is there any resolution in the minute book referring to that? A. There appears to be a resolution contained in the minutes of the annual meeting held July 19, 1910, at which meeting the amount intended to be set out in minute of September 8, 1908, is stated as $2,016.55, and in which resolution all the charges of credits appearing on the A. Gould Harrison ledger account and the entries made in connection therewith are approved.

Mr. Maxson: Now, Mr. Wenck, in giving testimony in reply to the Master's question, your information comes entirely from what you saw in the minute book, does it not?

Mr. Wenck: Yes; the only other credits to A. Gould Harrison's account are four items aggregating $6.75 which offset charges to him included in the drawings from August 3, 1909, to the end of the account August 23, 1911, as shown on Exhibit D. A. 4.

Mr. Maxson: Have you, Mr. Nasmyth, computed the salary account represented by that item of $680 of July 31, 1906?

Mr. Nasmyth: Yes.

Mr. Maxson: How many weeks do you find that to be?

Mr. Nasmyth: Exactly 34 2/3 or 4 days, which would aggregate $693.32.

By Mr. Harrison:

Q. Mr. Wenck, with reference to the debit entry on the A. Gould Harrison drawing account under date of November 21, 1905, of $170.73, I find a reference to the journal folio 468, and there find a debit of the following items which total $170.73:

A. G. Spencer Co.	$25.89	
E. E. Bond,	9.50	
F. L. Heller,	24.92	
M. H. Canfield,	7.36	
E. M. Harris,	43.81	
John Blondel & Son,	31.25	
J. H. Connor Coal Co.,	25.00	
A. E. Kinnan & Son,	3.00	
	———	$170.73

Mr. Maxson: It is the journal you are now referring to, to show what those items are for.

A. They are bills against A. Gould Harrison which the company paid and charged to Mr. Harrison.

Q. In whose handwriting are those? A. In Mr. Coleman's.

Mr. Maxson: I object on the same ground; that this witness has not been qualified to testify to the handwrting of Mr. Coleman; the same objection that was originally made.

Mr. Harrison: We can qualify him if necessary. He knows his handwriting.

Q. Journal entry of $11.25 appearing on the A. Gould Harrison drawing acount under date of November 23, 1905, is supported by a journal entry of the same date on page 469; what is that? A. Debiting the amount of $11.25 to expenses and crediting A. Gould Harrison for turkeys bought December 24, 1905.

Q. In whose handwriting is that entry made? A. Mr. Coleman's, the same as the other.

Mr. Maxson: I make the same objection.

By Mr. Maxson:

Q. Mr. Wenck, will you examine the entries that go to balance the account that has been referred to, at the end of the fiscal year, and state in whose handwriting those are made, if you know? A. Entry March 31, 1906, of $4,552.63 is in Mr. Coleman's. July 31, 1906, for $680 likewise in Mr. Coleman's. August 1, 1907, for $1,040, in Mr. Coleman's handwriting.

Q. I mean the journal entries.

Mr. Harrison: We have not the journal entries.

A. Entry July 30, 1908, $2,016.55, is in Mr. Tichenor's handwriting. Entry July 30, 1909, $2,000, also in Mr. Tichenor's handwriting.

Q. My question was as to the original entries. Whose are those? A. The first one is folio 590, March 31, 1906, $4,552.63, made, I should judge, by A. Gould Harrison; $680, folio 761, July, 1906, in A. Gould Harrison's handwriting; August 1, 1907, folio 524, $1,040, in Mr. Coleman's handwriting; August 31, 1907, $386.74, in Mr. Coleman's handwriting; November, 1907, folio 653, $65, in Mr. Coleman's handwriting.

Samuel H. Wenck—By Master—Direct

It is consented by counsel that the time for the Master to file his reported be extended until

It is also consented by counsel that the signatures to testimony be waived, and that counsel be permitted to correct said testimony.

Miscellaneous Exhibit.

THE HARRISON MILLING COMPANY,
Wholesade and Retail Dealers in
FLOUR, FEED, GRAIN, HAY, AND STRAW.
Montclair, N. J. August 1st 1903

Assets	
Real Estate, B'l'dgs, Mchy Etc	26 755 38
Hores, Trucks, Harness Etc	2 082 64
Office Furniture	115 50
Store House	25 00
Sundry a/cs	1 560 63
Cash	1 693 58
Open a/cs (Considered good)	14 678 26
Bills Receivable	286 52
Inventory	5 012 19
	52 209.70
Liabilities	
Capital Stock	8 000 00
Savings Bank Mtge	6 250 00
Est H Mullen	450 00
Bonds ($1.000. pd off Aug 1st)	13 000 00
Bills Payable (accommodation)	2 400 00
Do Do a/cs	7 314 09
Open a/cs	1 687 39
Profit & Loss balance	13 108 22
	52 209 70

10

Exhibit D-3½.

Exhibit D-3½ is a sheet of the individual ledger of the Bank of Montclair, said sheet being entitled "Harrison Milling Company," and containing the account of said company for the period indicated on the sheet. It is stipulated that said sheet shows a credit entry of deposit under date of September 19, 1906, made in due course of business, for $2272.63.

Exhibit D-4½.

20

Exhibit D-4½ is a sheet of the individual ledger of the Bank of Montclair, said sheet being entitled "A. Gould Harrison," and containing the account of said A. Gould Harrison for the period indicated on the sheet. It is stipulated that said sheet shows a debit entry of $2000.00, under date of September 19, 1906, made in due course of business.

Exhibit D-4¾.

30 Exhibit D-4¾ is a "Customer's" or "Proof" ledger of the Bank of Montclair, and shows, under date of September 19, 1906, a debit entry of $2000.00 opposite name "A. Gould Harrison," and a charge of said amount against his account, and also shows credit entry on the same date of $2272.63 opposite name "Harrison Milling Company", and a credit of said amount to the account of said company.

40

Stipulation as to Exhibit.

It is stipulated and agreed that the entries in Exhibit D A-3, being the ledger of the defendant corporation, pertinent to show the entries therein relating to the purchase of the fifteen (15) shares of corporate stock of the Harrison Milling Company, in issue in this cause, are as follows:

LEDGER 1906 folio 64

E. M. Beyea

1906				1907				
June 1	Balance O. L.	58	41.68	Feb 21	15 Sh	Stock	1500.00	
Oct 14		323	14.00		Ida M.	382		
1907				Aug 1		524	525.68	
Feb 18		383	80.00					
" "	Ida M.	"	552.68					
" 21	" "	"	1337.32					
			2025.68				2025.68	

Stipulation as to Exhibit.

It is stipulated and agreed that the entries in Exhibit D A-2, being the journal of the defendant corporation, pertinent to show the entries therein relating to the purchase of the fifteen (15) shares of corporate stock of the Harrison Milling Company, in issue in this cause, are as follows:

JOURNAL—folio 524

Aug 1, 1907	Mdse—E. M. Beyea—		
	expenses and prem		
	on stock	525.68	
	(64)		

Stipulation as to Exhibit.

It is stipulated and agreed that the entries in Exhibit DA-1, being the cash book of the defendant corporation, pertinent to show the entries therein relating to the purchase of the fifteen (15) shares of corporate stock of the Harrison Milling Company, in issue in this cause, are as follows:

CASH BOOK—Credits—fol. 383

Feb. 19, 1907	(64) Ida M. Beyea a/c stock 15 shares			$462.68
" " "	(64) Ida M. Beyea Int. & div. bonds (1905)			90.00
" 21, "	Ida M. Beyea	337.32		
		1,000.00		1,337.32
				$1,890.00

DEBITS—fol. 382

Feb. 21, 1907 (64) Ida M. Beyea 15 sh stock to A. G. H. a/c ticket on loan $1,500.00

Statement as to Exhibit.

Exhibits H V 3, H V 4, H V 5, H V 6 and H V 7 are the trial balance books of the corporation from June, 1897, covering the period in which the withdrawals of defendant, A. G. Harrison, appear on the ledger and other books of the corporation. These trial balances are abstracts of all the ledger accounts of the defendant corporation, and show from month to month the net disbursements and credits of such ledger accounts. In these trial balance books appear from month to month the debits against the A. G. Harrison account as taken from the ledgers of the corporation.

Stipulation as to Exhibit.

It is stipulated and agreed that the entries in Exhibits D A-1, D A-2 and D A-3, being respectively the cash book, journal and the ledger of the defendant corporation, show the following state of facts as to debits and credits in the drawing account of defendant A. G. Harrison:

1905		Cash Book or Journal folio	Dr.	1906		Cash Book or Journal folio	Cr.
Nov	1 Bal		3508.54	Mch 31	Turkeys	590	11.25
	1 To J. W. V.	441	103.00		Paid by		
	1 Check	167	3.38		A. G. H.		
	7 "	169	45.00		" Bal to		
	17 Slips 375.00 60.00 18.25	173	453.25		12/1/05		
	21 personal a/c' credited	468	170.73		salary		4552.63
	28 check	177	6.48				
	" "	"	45.				
	" cash	"	33.50				
	29 slips	"	195.				
			4563.88				4563.88

Gross charges shown on the journal, cash book and ledger of the corporation and debited to the A. G. Harrison account between February 6, 1906, and July 31, 1909, aggregate $6,238.29. The following credits appear on the books above referred

Stipulation as to Exhibit

to in the A. G. Harrison account and balance the total debit items, aggregating $6,238.29.

1906			Cash Book or Journal folio	
July	31	Extra Salary 12/1/05 to 8/1/06	761	680.
1907				
Aug	1	" " 1906 & 7	524	1040.
Sept	25	Salary account	561	386.74
Nov	30	Wagon W Horton	653	65.
1908				
July	30	To salary a/c	245	2016.55
1909				
Feby	1	Pony	246	50.
July	31	Salary a/c to 8/1/09	75	2000.00
				6238.29

The books above referred to show debits against the drawing account of A. G. Harrison from July 31, 1909, to August 23, 1911, aggregating $875.33. Credits are also shown during the same period aggregating $6.75, and the net amount debited against said account is $868.58.

No. 107 Caldwell, N. J. September 18, 1906

THE CALDWELL NATIONAL BANK.

Pay to the order of A. Gould Harrison....$1975.00
Nineteen Hundred and Seventy-five..DOLLARS.

J. H. HARRISON.

Safe Deposit Boxes
for rent.
PAID 9-20-06

Endorsement:
Fod deposit,
A. Gould Harrison.

Exhibit D-5½.

No. 14 19 Shares

Incorporated under the Laws of the State of New Jersey

CAPITAL, $125,000.00 *SHARES,* $100.00

THIS IS TO CERTIFY, THAT A. Gould Harrison is entitled to Nineteen Shares of the Capital Stock of THE HARRISON MILLING COMPANY Transferable only on the Books of the Company, in person, or by Attorney, on surrender of this Certificate.

IN WITNESS WHEREOF, The said Company has caused its Corporate seal to be hereto affixed, and this Certificate to be signed by its president

Dated, February 28 1910

A. Gould Harrison, Secretary

Frederick K. Fish, President

Exhibit C-4.

No. 2886

THE HARRISON MILLING CO

Montclair, N. J. Feby 21st 1907

Pay to the order of Ida M. Beyea $337.32 Three hundred thirty seven and 32/100 Dollars. a/c Stock H M Co. Stock reads: "a/c 15 Shares Stock, H. M. Co."

To the Bank of Montclair Montclair, N. J.

THE HARRISON MILLING CO.
A Gould Harrison. Treas'r

(Endorsement on back.)
Pay to the Order of
Corn Exchange National Bank
Philadelphia, Pa.
All Prior Endorsements Guaranteed.
The Dime Deposit and Discount Bank,
Scranton, Pa.
C. F. Hess, Cashier.

Pay to the Order of
Any Bank or Trust Company,
Prior Endorsements Guaranteed,
Corn Exchange Nat'l Bank,
Philadelphia, Pa.
Chas. S. Caldwell, Cashier.
Paid 2-28-07
Ida M. Beyea

Exhibit C-5.

No. "A"

THE HARRISON MILLING CO

Montclair, N. J. Feby-15th 1907

Pay to the order of C. F. Hess Cashier $462.68 Four hundred sixty two and 68/100 Dollars. To take up bank note on them.

To the Bank of Montclair Montclair, N. J.

THE HARRISON MILLING CO.
A Gould Harrison. Treas'r

(Endorsement on back.)
Pay to the Order of
Corn Exchange National Bank
Philadelphia, Pa.
All Prior Endorsements Guaranteed.
The Dime Deposit and Discount Bank,
Scranton, Pa.
C. F. Hess, Cashier.

Pay to the Order of
Any Bank or Trust Company,
Prior Endorsements Guaranteed,
Corn Exchange Nat'l Bank,
Philadelphia, Pa.
Chas. S. Caldwell, Cashier.
Paid 2-18-07

Exhibit C-6.

No. "B"

THE HARRISON MILLING CO

Montclair, N. J. Feby 15 1907

Pay to the order of Ida M. Beyea $90.00 Ninety and no/100 Dollars. One years int on stock.
To the Bank of Montclair Montclair, N. J.

THE HARRISON MILLING CO.
A Gould Harrison Treas'r

(Endorsement on back.)
Pay to the Order of
Corn Exchange National Bank
Philadelphia, Pa.
All Prior Endorsements Guaranteed.
The Dime Deposit and Discount Bank,
Scranton, Pa.
C. F. Hess, Cashier.

Pay to the Order of
Any Bank or Trust Company,
Prior Endorsements Guaranteed,
Corn Exchange Nat'l Bank,
Philadelphia, Pa.
Chas. S. Caldwell, Cashier.
Ida M. Beyea
Paid 2-18-07

Exhibit C-7.

No. 2887

THE HARRISON MILLING CO

Montclair, N. J. Feby 21st 1907

Pay to the order of Ida M Beyea $1000.00 One thousand and no/100 Dollars. In full of all demands to date. Stub reads: "Bal due on Stock" To the Bank of Montclair Montclair, N. J.

THE HARRISON MILLING CO.
A Gould Harrison. Treas'r

(Endorsement on back.)
Pay to the Order of
Corn Exchange National Bank
Philadelphia, Pa.
All Prior Endorsements Guaranteed.
The Dime Deposit and Discount Bank,
Scranton, Pa.
C. F. Hess, Cashier.

Pay to the Order of
Any Bank or Trust Company,
Prior Endorsements Guaranteed,
Corn Exchange Nat'l Bank,
Philadelphia, Pa.
Chas. S. Caldwell, Cashier.
Ida M. Beyea
Paid 3-7-07

Exhibit C-8.

$2000.00

Montclair, N. J., Feb. 20, 1907.

Three (3) months after date we promise to pay to the order of Evelyn L. Harrison, Two Thousand and 00/100 Dollars, at the Bank of Montclair, Montclair, N. J. Value received.

THE HARRISON MILLING CO.

B. D. A. Gould Harrison, Treas.

No. 691. Due May 20,

(Endorsement on back.)
Evelyn L. Harrison.
Paid 5-18-07

Exhibit D-2.

A. GOULD HARRISON.

No. 1185

Montclair, N. J., Sept. 18th, 1906.

BANK OF MONTCLAIR.

Pay to the order of Harrison Milling Co. Two Thousand and no/100 Dollars ($2000.00).

$2000.00 A. Gould Harrison.

Safety deposit boxes
for rent.

(Endorsement on back.)
Pay Bank of Montclair
or order
The Harrison Milling Co.
9-19-06

No.5509

Order for Delivery.

HARRISON MILLING CO.

Montclair, 19

Mr.

6/24/13
Tichenor
Cash 2.00
6/25 " 3.00

No. 2788.

Order for Delivery.

HARRISON MILLING CO.

Montclair, 19

Mr. At Bank for Collection.

1/20 A. Simonson 24.23

No. 1062

Order for Delivery.

HARRISON MILLING CO.

Montclair 10/25/1909

Mr.

Harrison Credit
ck L. G. Dey endorsed to
Harrison M. Co. 100.00
Dr.
Ck to Federal Trust Co. 120.00

Debit balance, 20.00

Exhibit C-1.

The Harrison Milling Co
Minutes of first Meeting of Incorporators

At a meeting of the Incorporators of the Harrison Milling Co held at the office of Guild, Lum & Sommer in the Prudential Building in the City of Newark on the 19th day of July, 1899 at 4 o'clock in the afternoon pursuant to a written waiver of notice signed by all the incorporators the following proceedings were had.

Present: Hugh Mullen, A. Gould Harrison and Evelyn L. Harrison, being all the incorporators

On Motion Mr. Mullen was appointed Chairman and Mr. Harrison was appointed Secretary of the Meeting

The Secretary then read the certificate of incorporation duly certified by the Secretary of State and on motion it was ordered that the certificate of incorporation and the written waiver of the notice of the meeting be spread upon the minutes

Copy
Certificate of Incorporation
of
The Harrison Milling Co

This is to certify, that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of an act of the legislature of the State of New Jersey, entitled

"An Act concerning corporations (Revision of 1896) and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite their respective names,

First: The name of the Corporation is
The Harrison Milling Co

Exhibit C-1

Second: The location of the principal office in this State is at the mill formerly known as the G B Harrison & Co Mill on Grove St in the Town of Montclair, County of Essex

The name of the Agent therein and in charge thereof upon whom process against this corporation may be served is A Gould Harrison

Third: The objects for which this corporation is formed are to manufacture and sell grain products and to buy, sell and deal in Hay, Grain and Kindred products and such other articles of merchandise as the Corporation may see fit to deal in.

Fourth: The total authorized capital stock of this Corporation is Twenty five Thousand Dollars divided into two hundred and fifty shares of the par value of one hundred dollars each

Fifth: The name and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of such subscriptions being the amount of capital stock with which the company will commence business, are as follows

Hugh Mullen Montclair N. J. Eight Shares
A Gould Harrison Caldwell N. J. One Share
Evelyn L Harrison Caldwell N. J. One Share

Sixth: The period of the existence of this company is unlimited.

In Witness Whereof, we have hereunto set our hands and seals the fourteenth day of July A. D. Eighteen hundred and ninety nine.

Signed, Sealed and delivered in the presence of Fdk. H. Lum

Hugh Mullen L. S.
A Gould Harrison L S
Evelyn L. Harrison L S

(10c. internal revenue stamp cancelled)

Exhibit C-1

State of New Jersey }
County of Essex } ss.:

Be it remembered, that on this fourteenth day of July, A. D. Eighteen hundred and ninety nine, before me, the Undersigned A master in Chancery of New Jersey, personally appeared Hugh Mullen, A Gould Harrison and Evelyn L Harrison, who I am satisfied are the persons named in and who executed the foregoing certificate and I having first made known to them the contents thereof they did each acknowledge that they signed sealed and delivered the same as their voluntary act and deed. And the said Evelyn L Harrison being the Wife of A Gould Harrison, on a private Examination, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed freely, without any fear, threats or compulsion of or from her said husband

Fd'k H Lum
A Master in Chancery
of New Jersey

(10c. internal revenue stamp cancelled)
Endorsed:

"Received in the Clerk's office of the County of Essex, on the 15 day of July A. D. 1899 and recorded in Book 17 of In. Bus. Cos. for said County, page 209

William O Krubler
Clerk"

Filed July 17th 1899
Geo Wurts
Secretary of State

Exhibit C-1

State of New Jersey
Department of State

I Alexander H. Rickey Assistant Secretary of State of New Jersey

Do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of The Harrison Milling Company and the endorsements thereon as the same is taken from and compared with the original, filed in the office fo the Secretary of State on the 14th day of July A. D. 1899 and now remaining on file thereon

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton this Seventeenth day of July A. D. 1899

A H Rickey
[Seal] Assistant Secretary of State

Copy of

Waiver of Notice of Meeting of Incorporators

We the undersigned, being all the incorporators of the Harrison Milling Co organized under the laws of the State of New Jersey, do hereby waive notice of the time, place and purpose of the first meeting of the incorporators of the said company and do fix the nineteenth day of July, 1899 at 5 o'clock in the afternoon at the time and the office of Guild, Lum & Sommer in the Prudential Building, in the City of Newark, as the place of said meeting,

And we do hereby waive all the requirements of the Statutes of New Jersey as to the notice of this meeting and the publication thereof; and we do consent to the transaction of such business as may come before said meeting.

Dated Newark N. J. July 19th 1899

Hugh Mullen
A Gould Harrison
Evelyn L Harrison

Exhibit C-1

The Secretary presented a form of By-Laws which was read article by article and unanimously adopted.

On motion it was ordered that the By-Laws so adopted be spread upon the minutes.

Copy of By-Laws

Article I.

Meetings.

Section 1. The annual meeting of the Stockholders for the election of directors and the transaction of other business shall be held at the principal office of the company on Grove Street, in the Town of Montclair, Essex County, New Jersey, on the Nineteenth day of July in each year at the hour of three o'clock in the afternoon of which meeting notice shall be given by the Secretary of the Company by mail or personal delivery at least ten days prior thereto: the notice if mailed to be directed to the stockholder at his last known post office address.

Sec. 2. Special meeting of the stockholders may be called by the board of directors whenever they may be deemed necessary. Notice of such meetings shall be given as in Section 1.

Sec. 3. Special meetings of the stockholders may be held at any time without notice all the stockholders being present or assenting thereto.

Article II.

Directors and Officers.

Section 1. The Board of Directors shall consist of three members and shall have the management and control of the affairs of the business of the Company and shall such agents and employees as they deem advisable.

Exhibit C-1

Sec. 2. The Directors shall by ballot elect the officers of the Company for the ensuing year.

Sec. 3. The officers of the Company shall consist of a president, a vice president a Secretary and a Treasurer.

One person may fill any two offices except the incompatible ones of president and vice-president.

Sec. 4. The Directors shall fix the compensation of the Officers and shall assign to them in addition to the duties required by law such duties they may deem proper.

Sec. 5. In case of the absence of an Officer the board of directors may delegate his powers and duties to any other Officer or Director for the time being.

Sec. 6. The Treasurer shall give bond in the sum of Five thousand Dollars with one sufficient surety for the faithful discharge of his duties.

Article III.

Checks, Notes, Drafts, &c.

Section 1. All notes, checks, drafts and other negotiable instruments which shall be made or accepted in the name of the company shall be signed by the Treasurer.

All notes, checks and other negotiable instruments received by the Company may be endorsed for deposit by either the president or Treasurer.

Sec. 2. Dividends shall be declared upon the Stock of the Company from the profits of the business of the corporation at the annual meeting of the board of directors and at such other time or times as the board of directors may deem best.

Exhibit C-1

Article IV.

Stock.

Section 1. The Certificate of Stock shall be signed by the president and Treasurer and shall be transferred only upon the books of the Company in person or by attorney and upon the surrender of the Certificate.

Article V.

Meetings of Board of Directors.

Section 1. The annual meeting of the board of directors shall be held immediately after the adjournment of the annual meeting of stockholders.

Sec. 2. The president may call such special meetings as he may deem proper by a notice signed by the Secretary or by himself and mailed to each director at his last known post office address two days prior to such meeting or delivered personally for the same length of time.

Sec. 3. The president shall call special meetings of the directors on an application in writing of two members of the board of directors.

Sec. 4. Meetings may be lawfully held at any time without notice all the members of the board of directors assenting thereto.

Article VI.

Seal.

Section 1. The corporate seal of the Company shall be circular in form bearing the words The Harrison Milling Company on the outer edge and the figures "1899" in the centre.

Exhibit C-1

Article VII.

Amendments.

Section 1. Amendments to the foregoing by-laws may be made at any annual meeting or at any special meeting called for that purpose upon a two-thirds vote of all the stock.

On motion an election was then held by ballot and the following were unanimously elected a board of directors, namely:

Hugh Mullen, A Gould Harrison, Evelyn L. Harrison.

On motion it was resolved that the principal office of the Company be at the office of the mill on Grove Street in the Town of Montclair, Essex County, New Jersey.

On motion it was resolved that the agent of the Company having charge of said principal office and upon whom process against the corporation may be served be A. Gould Harrison.

On motion the meeting adjourned without day.

A. Gould Harrison Secy.

Approved.

Montclair, N. J., July 20, 1899

At a meeting of the board of directors of The Harrison Milling Co., held July 20, 1899, a resolution was carried authorizing Hugh Mullen to sign an agreement with the Harrison Milling Co., party of the first part, A. E. Howe & Co., H. Mullen, A. M. Mathews & Co., C. R. Bullivant & Co. and H. C. Dabney, party of the second part and N. S. Colman, Assignee, party of the third part. This agreement being in relation to sale of property of the late

Exhibit C-1

firm of G. B. Harrison & Co. to the Harrison Milling Co. Meeting adjourned without day.

A. Gould Harison, Secy.

Approved.

Montclair, N. J., Aug. 8, 1899.

At a meeting of the board of Directors held on the above date, at the office of the Company, Grove St. All the Directors being present. The President in the chair. The resignation of A. Gould Harrison as Sec'y was received and accepted. Upon motion, N. S. Colman was nominated and unanimously elected to fill the vacancy. Meeting adjourned without day.

Approved

H. Mullen, Prest.
A. Gould Harrison, Secy.

Montclair, July 19, 1900

At the first Annual Meeting of the Stockholders held at the Office of the Company at the mill on Grove St., Montclair. The President in the chair.

The minutes of the last meeting was read and approved.

The Inventory taken July 2nd showing the condition of the Company was approved.

On motion the Election of Directors for the ensuing year was made, namely, Hugh D. Mullen, A. Gould Harrison, Evelyn L. Harrison.

On motion the meeting adjourned without day.

N. S. Colman,
Secy.

Approved.

Exhibit C-1

Montclair, N. J., July 19, 1900

At a meeting of the Directors immediately after the adjournment of the Stockholders meeting; Present, Hugh Mullen, A. Gould Harrison.

Mr. Mullen Chairman;

On motion the Election of Officers took place and the following were reelected for the ensuing year

Hugh Mullen Prest, Evelyn L. Harrison Vice Pres't A. Gould Harrison Treas, and Agent, with same authority and conditions as the past year, N. S. Colman Secy. There being no further business the meeting adjourned without day.

N. S. Colman,
Secy.

Approved.

Montclair, June 18, 1903

At a special meeting of the stockholders A. Gould Harirson & Evelyn L. Harrison present. Sec'y Colman read call of meeting as follows "Take notice that a special meeting of the stockholders of the Harrison Milling Co. will be held at the office of the Company at 3 P. M. Thursday June 18th, 1903 for the purpose of electing a Director of said Co. to fill vacancy caused by the death of Hugh Mullen for his unexpired term."

A. G. Harrison was chosen chairman. Resolution was offered that one share of stock be issued to Henry C. Dabney at par. The Vice Pres't and Treas. sign the stock motion made and carried, and stock issued.

Meeting adjourned.

N. S. Colman,
Secy.

Approved.

Exhibit C-1

At a meeting of the Directors, immediately after the adjournment of the stockholders meeting, by call Vice President, who calls meeting to order.

Resolution that Henry C. Dabney be elected President, to fill vacancy caused by death Hugh Mullen was carried by ballot.

Resolution, that the Board of Directors do hereby direct the issue of Forty (40) shares of the stock of The Harrison Milling Co. said stock to be sold at par and the proceeds thereof paid into the Treasury of the Company and the Prest and Treasurer are hereby directed to execute and deliver certificates to the amount of Forty shares, carried.

Meeting adjourned without date.

N. S. Colman,
Secy.

Approved.

Sept. 22nd, 1903

At a special meeting of the Stockholders of the Co. the meeting being called to order by the President.

The minutes of the last meeting were read and approved.

The resignation of H. C. Dabney was received and accepted and F. K. Fish was nominated and elected by ballot to fill the vacancy, as President. H. C. Dabney's one share of stock was returned and ordered cancelled off the Stock Book.

No further business received the meeting adjourned without date.

N. S. Colman, Secy.

Approved.

Exhibit C-1

Febry 17th, 1904

At a special meeting of the stockholders of the Co. Called to order by the President.

38 Shares of Stock issued to Hugh Mullen, issued, August 1st, 1899 No. 1—10 shares No. 2—10 shares No. 3—10 shares No. 4—5 shares No. 5—3 shares making a total of 38 shares returned and ordered cancelled off the Stock Book and the following issued to take their place to

Evelyn L. Harrison, No. 10 Fifteen Shares.

Ida M. Beyea No. 11 Fifteen Shares.

Edwin M. Beyea No. 12 Four Shares.

A. Gould Harrison No. 13 Four Shares.

No other order of business coming before the meeting, adjourned without day.

N. S. Colman,
Secy.

Approved.

July 10th, 1904

At a special meeting called.

The Treasurer was authorized to sign Lease of Coal yard to H. C. Dabney. No further business meeting adjourned without date.

N. S. Colman,
Secy.

Approved.

July 19th, 1904.

The annual meeting called for this date and there not being a quorum present same was adjourned without date. Subject to call of the Pres't.

N. S. Colman,
Secy.

Approved.

Exhibit C-1

Montclair, N. J., Oct. 21/04

The (adjourned) annual meeting called by the Pres't for Oct 21/04 at the office of the Company 19 Grove St. 61 shares being represented, as follows

F. K. Fish	40	Shares
A. Gould Harrison	5	do
Evelyn L. Harrison	16	do

by proxy to A. Gould Harrison.

The Prest in the chair. Meeting called to order and the minutes of last meeting and yearly statement read and approved.

Motion, made and seconded that a dividend of 6% be paid on Stock ($8,000) Eight thousand Dollars to each shareholder.

On motion the meeting adjourned without date.

N. S. Colman,
Secy.

Approved July 19/05

Montclair, N. J., Oct. 21/04

At a meeting of the Directors immediately following the Stockholders adjourned meeting

The Prest in the Chair

The Election of Officers took place and the following were reelected

S. K. Fish Prest.

Evelyn L. Harrison Vice Pres't.

A. Gould Harrison Treas'r and Agt with same authority and conditions as heretofore.

N. S. Colman, Sec'y.

No further business on hand motion, made and seconded the meeting adjourned without date.

N. S. Colman,
Sec'y

Approved July 19/05.

Exhibit C-1

Montclair, N. J., July 19/05

At the Annual Meeting of the Stockholders held at the office of the Co. 19 Grove St. the following being present,

F. K. Fish, Evelyn L. Harrison, A. Gould Harrison, E. M. Beyea,

The meeting was called to order the Pres't F. K. Fish in the chair.

The minutes of the last meeting was read by the Sec'y and approved, no special business coming before the meeting it was adjourned without date.

N. S. Colman,
Secy.

Montclair, N. J., July 19/05

At the meeting of the Directors immediately after the adjournment of the Stockholders meeting.

Mr. F. K. Fish in the chair the following officers were reelected for the ensuing year

F. K. Fish Pres't.

Evelyn L. Harrison Vice Pres't.

A. Gould Harrison Treas and Agent with same authority and conditions as heretofore.

N. S. Colman Secy.

There being no further business before the meeting. Motion made and seconded the meeting adjourned without day.

N. S. Colman,
Secy

Montclair, N. J., Nov. 18/05

At a special meeting of the Directors called by the Pres. all being present. A. G. Harrison acting as chairman. On motion of E. L. Harrison a resolution was passed that a dividend of 5% be de-

Exhibit C-1

clared on the 80 shares of Stock, on motion of E. L. Harrison a resolution was passed that the compensation of the President be fixed for the year Aug. 1/05 to Aug. 1/06 at the rate of $1200.00 per year to be paid monthly the following resolution was on motion of Mr. F. K. Fish unanimously passed whereas payments to the amount of 4552/63 dollars as more fully appears from an open a/c in the name of A. Gould Harrison have been made by the Directors of the Harrison Milling Co. to the said A. Gould Harrison as and for compensation for special work and services as manager of the said Co. and whereas these payments have been made at the rate of 760.00 dollars per year since the incorporation of said Co. in accordance with a contract with said Directors therefore be it resolved that such payments made as above be ratified and confirmed and charged to the General Salary a/c of the Harrison Milling Co. and that the salary of the said A. Gould Harrison be at the rate of 40/00 per week from Dec.1 1/05 to Aug 1/06. Meeting adjd without date.

N. S. Colman Sec.
By A. Gould Harrison
"Protem"

Approved 11/18/05

Montclair, N. J., Sept. 2—07

At the adjourned meeting of the Stockholders the following were present

F. K. Fish and A. Gould Harrison.

The minutes were read and approved there being no further business the meeting adjourned.

N. S. Colman Secty.
By A. Gould Harrison
Protem.

Approved 9/2/07

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Montclair, N. J., Sept. 2—07

At the meeting of the Directors the following officers were reelected for the ensuing year

F. K. Fish Pres. E. L. Harrison Vice Pres. A. G. Harrison Treas & Mgr. with same authority as before, N. S. Coleman Secty., a resolution was on motion of Mr. F. K. Fish passed that the overdraft of A. Gould Harrison's amounting to $386.74 be charged off giving his a/c credit for same, meeting adjourned without date.

N. S. Colman Secty.
By A. Gould Harrison
Protem.

Approved 9/2/07

Montclair, N. J., Sept. 8—1908

At the meeting of The Board of Directors the following officers were reelected for the ensuing year

F. K. Fish Prest. E. L. Harrison Vice Pres. A. Gould Harrison Treas. and Mgr. with same authority as before, on motion A. Gould Harrison was elected Secy. of the Co. in place of N. S. Colman deceased. A Resolution by Mr. Fish was passed that the overdraft of A. Gould Harrison amtng to be charged off to Salary a/c. Meeting adjourned without date.

Approved 9/8/08 A. Gould Harrison Secty.

Montclair, N. J., Sept 30th—1909

At a meeting of the Board of Directors the following business was transacted, the Salary of the President and Treasurer to be three Thousand each for the ensuing year commencing Oct. 1st.

Meeting held at the main office 25 Grove St.

A. Gould Harrison
F. K. Fish.

Exhibit C-1

Montclair, N. J., Oct. 21, 1909

At a meeting of the Board of Directors of the corporation known as the Harrison Milling Co., held at their office 25 Grove St. Montclair, N. J., the following amendments were made to their Bylaws:

All checks and notes must be signed by the President and Treasurer. Renewal notes and drafts by either of above officers. This to take effect immediately.

The Harrison Milling Co.
F. K. Fish, Prest,
A. Gould Harrison, Secty.

At a meeting of the Board of Directors of The Harrison Milling Co. held Jany. 11—09 on motion of F. K. Fish a resolution was passed authorizing the Officers of the Co. to borrow on the mill property Grove St. Montclair the sum of $14000/00 on Bond and Mtg. for 3 years at 6% per annum and they to execute and sign the necessary papers.

Approved A. Gould Harrison Secty.

Montclair Mch 1—10

Special meeting of the Directors of the Harrison Milling Co. called by the Pres. all of the Directors being present. As there was no business transacted meeting adjourned without date.

A. Gould Harrison, Secty.

Montclair N J July 19—1910

The anual meeting of the stockholders of The Harrison Miling Co. was held at the office of the corporation at No. 19 Grove St. Montclair N. J. on the nineteenth day of July 1910 at three oclock in the afternoon.

Exhibit C-1

The meeting was called to order by Evelyn L. Harrison who was duly chosen chairman. A Gould Harrison was appointed Secretary of the meeting.

The secretary read the roll of Stockholders entitled to vote at the meeting.

The following stockholders were present in person:

Evelyn L. Harrison	16	shares
A. Gould Harrison	24	"

F. K. Fish was present and was represented by Robt. B. Knowles as proxy for the forty shares of stock held by said F. K. Fish, the proxy was presented by Mr. Fish and was ordered to be filed with the secretary of the meeting.

The secretary read a copy of the notice of the meeting together with the proof of mailing thereof to each stockholder of the corporation at least ten days prior to the meeting as required by the by-laws.

The transfer book and stock book of the corporation with a true and complete list in alphabetical order of the stockholders entitled to vote at the ensuing election with the residence of each and the number of shares held by each were produced and remained during the election open to inspection.

Upon motion duly made and seconded the minutes of the stockholders meeting of Sept. 2nd, 1907 were read and approved.

B. B. Tichenor and Geo. Dunn were appointed inspectors of election and duly sworn. Mr. Knowles objected to the appointment of Geo. Dunn as inspector and requested the appointment of Fred S. Taggart who was present at the meeting as one of Mr. Fish's counsel. Mr. Knowles also moved

Exhibit C-1

that Mr. Taggart be appointed inspector, the motion was not seconded.

The meeting then proceeded to the election of the directors by ballot and in accordance with the by-laws.

Nominations for the office of director were called for by the chairman. Mr. Knowles nominated Fred K. Fish and Mr. Harrison nominated Evelyn L. Harrison and A. Gould Harrison.

The polls were opened at 3.17 P. M. and all the stockholders prepared their ballots and delivered them to the inspectors.

The treas. of the corporation presented report of condition of the corporation as of June 30, 1910, with copies of appraisal and inventory as of said date, the Treas. discussed this report and Mr. Knowles asked various questions concerning the balance sheet and the items appearing thereon, Mr. Tichenor answered the questions of Mr. Knowles in detail after further discussion said report and statement were received and filed.

The treas. reported the execution in accordance with the by-laws by him as treas. of the corporation of a bond in the sum of five thousand dollars with the American Surety Co. as surety and presented said bond at the meeting. Mr. Knowles objected generally to the form of the bond without urging specific objections.

All the stockholders having voted the polls were declared closed.

The inspectors presented their report in writing showing that the following had received the greatest number of votes cast. Evelyn L. Harrison, A. Gould Harrison and Fredk. K. Fish.

The chairman declared the above named duly elected directors of the corporation to told office

Exhibit C-1

until the next annual election and until their successors are elected and qualify.

Mr. Knowles offered the following resolution:

Resolved that the books of account of the corporation be audited from the date of incorporation by a certified public accountant, and that his detailed report be made to the company.

Mr. Harrison objected to the audit because in his opinion it was unnecessary and because of the expense involved the estimates received by him for this work varied from seven hundred to one thousand dollars. Mr. Harrison stated that the bookkeepers employed by the corporation had been unusually capable and honest, that access to the books had always been accorded to Mr. Fish and that he had no objections to an audit at the expense of Mr. Fish the above motion was not seconded.

Mr. Knowles objected to the system of keeping the books of the corporation. Mr. Harrison stated that he had gone over the system with S. H. Henck certified public accountant who had advised him that the system was a satisfactory one for the business, that Mr. Henck had offered some minor suggestions which had been adopted. Mr. Harrison stated that he believed the system to be entirely sufficient. Mr. Knowles thought that the system should show the amount of currency, bills and checks received each day.

Mr. Knowles moved that the system of bookkeeping be changed so that the amount of money received each day as distinguished from checks will appear and that any further suggestions to be made by or which shall seem satisfactory to a public accountant be adopted. Mr. Harison objected to this resolution for reasons as previously stated and stated that the books of the corporation had always

Exhibit C-1

been open and accessible and would always be open and accessible to Mr. Fish and that any reasonable suggestions that might be made would receive cordial consideration by him and by the bond, the above motion was not seconded.

The secty. was directed to file the following papers

1. Notice of meeting and proof of service.
2. List of Stockholders produced at the meeting.
3. Proxy of Fredk. K. Fish.
4. Report of Treas.
5. Inspectors oath and report.

No further business coming before the meeting upon motion duly passed the same adjourned.

A. Gould Harrison Secty.

The annual meeting of the Board of Directors of the Harrison Milling Co. was held at the office of the company No. 19 Grove St. Montclair N. J. on the nineteenth day of July, 1910 immediately after the adjournment of the annual meeting of the stockholders.

Present F. K. Fish
A. Gould Harrison
Evelyn L. Harrison

Mr. Robert B. Knowles and Fredk. S. Taggart of counsel for Mr. Fish and Mr. J. H. Harrison of counsel for Mr. Harrison were also present.

Evelyn L. Harrison was chosen temporary chairman, A. Gould Harrison was appointed secretary.

The chairman called for nominations for the office of president for the ensuing year. A. Gould Harrison nominated Evelyn L. Harrison. Fredk. K. Fish nominated himself upon ballot duly had and all the directors having voted the secty. re-

Exhibit C-1

ported that Evelyn L. Harrison had received two votes and Fredk. K. Fish one vote. Evelyn L. Harrison was thereupon declared president. Mr. Fish objected to Evelyn L. Harrison voting for herself.

Fredk. K. Fish was duly elected vice president by ballot and A. Gould Harrison was duly elected secty. of the corporation. Fr. Fish objected to this election on the ground of unfairness and because proceedings were pending.

Upon nominations being called for Treas. A. Gould Harrison nominated himself and Fredk. K. Fish nominated himself upon ballot duly had and all present having voted, the secty. reported that A. Gould Harrison had received two votes and Fredk. K. Fish one vote the president thereupon declared A. Gould Harrison duly elected treasurer of the corporation. Mr. Fish urged the same objections as above.

Mr. Harrison moved that he be chosen as manager and agent of the corporation at Montclair for the ensuing year with the same rights, duties and powers as previously exercised. Mr. Fish nominated himself for this office upon ballot duly had and all present having voted the chairman declared A. Gould Harrison elected, under the foregoing resolution said Harrison having received two votes and said Fish one vote.

Upon motion duly seconded and passed, it was resolved that the officers of the corporation serve without compensation except the agent and manager, whose salary shall be the sum of three thousand dollars per year payable monthly. Mr. Fish objected to the fixing of this salary on the ground of it being excessive because of incompetency and action pending. Mr. Fish further objected to the

Exhibit C-1

appointment of an agent because the authority and control of the corporation was in the board of directors. Mr. Harrison agreed with him and stated that he would be at all times subject to the directions and the control of the board.

The treasurer presented his bond in accordance with the by-laws in the sum of five thousand dollars signed by himself as principal and by the American Surety Co. as surety. The same was approved and ordered to be file. Mr. Fish objected to the holding of the bond by the Secty. the bond was offered to the Vice president who refused the same.

Mr. Fish moved that the books of the corporation be audited from the time of incorporation. Mr. Harrison urged the same objections as stated in the stockholders meeting this motion was not seconded.

Exhibit C-1

ACCOUNT OF A. GOULD HARRISON.

Aug. 1 1903	Debit balance	1,347 54		
" " 1904	Charges for preceding year	789 06		
" " 1905	" " " "	983 03		
" " "	to Feb 1/06 Charges	1,478 00		
" 14 1903	Credit by cash		3 75	
Feb. 21 1905	" " dividend		30 00	
Nov. 23 1905	" " turkeys for men paid by A. G. H.		11 25	
Mar. 3 1906	" " resolution in minute book.		4,552 63	
		4,597 63	4,597 63	
Feb. 1 1906	to Aug. 1/06 Charges	611 52		
Aug. 1 1907	Charges for preceding year	1,015 57		
" 1 1908	" " " "	2,561 20		
July 31 1906	Credit Salary 2/1/06 to 8/1/06		680 00	
Aug. 1 1907	" " 8/1/06 " 8/1/07		1,040 00	
Sept. 25 1907	" by resolution in minute book.		386 74	
Nov. 30 1907	" " 1 runabout chg'd to W. H. D. Horton		65 00	
July 30 1908	" " resolution in minute book, amount omitted		2,016 55	
		4,188 29	4,188 29	
Aug. 1 1909	Charges for preceding year	2,050 00		
Feb. 1 1909	Credit by cash for pony		50 00	
July 31 1909	By charge to Loss & Gain		2,000 00	
		2,050 00	2,050 00	
Aug. 1 1909	to 7/19/10 Charges to date	865 91		

Exhibit C-1

On motion duly seconded the following resolution was passed.

Whereas various charges and credits appear on the books of The Harrison Milling Co. on the individual ledger account of A. Gould Harrison agent and manager of the said corporation, abstract of which charges and credits is presented herewith and marked Exhibit X, account of A. Gould Harrison and,

Whereas a portion of said charges and credits have been duly approved by the directors of said corporation and appropriate minutes entered in the minute-book of the corporation, and

Whereas, the minute of Sept. 8th, 1908 does not set forth the amount to be charged off to salary account.

Be it resolved, that said charges and credits appearing on said ledger account and entries made in connection therewith be approved: that exhibit X above mentioned be made a part of these minutes; that the amount intended to be set out in said minute of September 8—1908 viz: $2,016.55 be fixed as the correct amount to be therein stated: that the credit for said amount on said ledger account be approved.

Be it further resolved that the net charges against the said A. Gould Harrison as above mentioned be regarded as payments for services rendered by him as manager and treasurer of said corporation.

Mr. Harrison informed the board that Mr. Percy Ingalls had requested an option for the sale of the real estate of the corporation. The advisability of giving an option was discussed in detail by all present, and on motion unanimously passed, Mr. Knowles and Mr. J. H. Harrison were authorized to negotiate with outside parties for the sale of the

Exhibit C-1

real estate and equipment of the corporation at Montclair and endeavor to obtain definite offer or offers for submission to the board of directors.

Mr. Fish moved that it be recommended to the stockholders that an amendment to the by-laws be made providing for the signature of checks and notes by the president and treasurer, this motion was not seconded.

Mr. Fish moved that it be recommended to the stockholders that proper proceedings be had to increase the directors of the corporation to four, this motion was not seconded.

After general discussion of other business details the meeting duly adjourned.

A. Gould Harrison, Secty.

Montclair, N. J., Feby. 17, 1915

Special meeting of the Board of Directors of The Harrison Milling Co. held at the registering office on above date Present A. Gould Harrison and E. L. Harrison the Secty presented waiver of notice of meeting for Director F. K. Fish upon motion the following resolution was duly passed

Whereas, the Town of Montclair and the Newark & Bloomingdale R. R. Co. & its lessees have agreed to pay the sum of seventy five hundred dollars ($7500) to the Harrison Milling Co. in full of damages to the property of the Harrison Milling Co. on the east side of Grove St. in the Town of Montclair Essex County New Jersey said damages having been caused by the alteration of lines and the changes of grade of Grove St. in front of the lands of said corporation and Whereas this corporation upon receipt of moneys aforesaid has agreed to give a release and surrender all claims and damages or de-

Exhibit C-1

mands by reason of the work performed and the changes made in connection with said alterations of lines and changes of grade:

Be it resolved that The Harrison Milling Co. hereby agrees to accept said sum of seventy-five hundred dollars ($7500) in settlement of all claims or demands by reason of the premises and hereby authorize the execution of the necessary release to the Town of Montclair and the Newark and Bloomfield R. R. Co. and its lessees upon the payment of said sum.

Be it further resolved that J. H. Harrison be and he hereby is authorized, as attorney, to receive said sum of seventy five hundred dollars ($7500) from said Town of Montclair or said Raliroad Companies, and to give the necessary receipt for same.

A. Gould Harrison Secy.

Opinion.

LEWIS, *V. C.*—The bill was filed in 1909. A demurrer was interposed, and finally an order entered allowing an amended bill to be filed. This was done in the early part of 1909. A demurrer was interposed to the amended bill, setting forth numerous grounds of objection. This was overruled.

The relief prayed for in the bill is: First, that an account be had of the amount due from defendant Harrison to the Harrison Milling Company because of improper disposition of the funds of the company by him; and second, that Harrison transfer and deliver to the Milling Company the 15 shares of stock purchased from Ida M. Beyea with the funds of the corporation, as alleged.

The cause came on for hearing before me, and at the conclusion of the taking of testimony the matter was referred to a master of this court to take and state an account from November 18, 1905, between A. Gould Harrison and the Harrison Milling Company, ascertaining and reporting how much of the funds, if any, belonging to the company, A. Gould Harrison has appropriated to his own use or purpose, either in his capacity as treasurer or otherwise, and to ascertain and state the amount due from him to the company because of any improper, illegal or irregular disposition made by him of the funds or property of the company, and in addition the master was ordered to take testimony for the court as to whether or not 15 shares of the capital stock of the company, purchased by him with the check of the Harrison Milling Company, were bought with the funds and paid for out of the treasury of the company; and the master reports: That he has taken and stated an account from November 18, 1905, between A. Gould Harrison and the Harrison Milling Company. That he has taken

as valid the resolution in the minute book of the Harrison Milling Company, dated November 18, 1905, which, in his opinion, charged off the net drawings of A. Gould Harrison in the sum of $4,-552.63 up to and including November 30, 1905. The account starts on December 1, 1905, and as to its debits is a summary of the drawings shown on the account in the ledgers of the company, known as "A. Gould Harrison," and throughout the testimony called his "drawing" account—$7,113.62. That the last item on either side of this account in the ledgers of the company is dated August 24, 1911, when the account appears to cease. That both expert accountants agree on this figure, $7,113.62, as the total of the drawings shown by the "A. Gould Harrison" account from December 1, 1905, to August 24, 1911, inclusive. That the accountant of the complainant seeks to add to this figure a total of $450.71—the drawings shown by the account from November 21, 1905, to November 29, 1905, inclusive. That it was the intention of the resolution, although it bears date November 18, 1905, to include the drawings to November 30, 1905; the figures, $4,-552.63, being plainly set forth in the resolution, and the ledger account showing a debit of that exact amount on November 29, 1905, is balanced by a credit entry of that amount, pursuant to the resolution.

The master further reports that, in order to ascertain how much of the funds, if any, belonging to the company, A. Gould Harrison has appropriated, either in his capacity as treasurer or otherwise, he has added to the total of the drawing account of A. Gould Harrison the salary which he actually drew, as shown by the books, from November 18, 1905, to September 30, 1909, after which latter date he was entitled to a salary of $3,000 per year; that from

the grand total he has deducted, as a matter of credit against the total debits, all of the credits shown in the ledger account of A. Gould Harrison, together with all salary which he actually drew from week to week during the period from November 18, 1905, to September 30, 1909; that in giving these credits shown in the ledger account to the defendant A. Gould Harrison he has found that all of the resolutions in the minute book of the Harrison Milling Company, charging off the overdrafts of A. Gould Harrison, and authorizing additional salary from time to time, are valid, and that their intent and purpose are carried out in the account books of the company. The master states in conclusion:

"That the amount due from the said A. Gould Harrison to the said company, because of any improper, illegal, or irregular disposition made by him of the funds or property of the said company, is the sum of $868.58, with interest from August 24, 1911, since which date said sum has been due. In arriving at this figure I have not given A. Gould Harrison any credits for salary which he did not draw at the rate of $3,000 per year, commencing October 1, 1909, as apparently authorized by resolution appearing on the minute book of the company under date of September 13, 1909, for the ledger account 'A. Gould Harrison' shows no such intention to credit him. It may be that he neglected to draw his full annual salary after October 1, 1909, but he cannot recover it in this action, in the absence in said ledger account of any expressed intention on the part of the company to credit his debit balance with such credits as may be due him on account of said salary."

The question concerning the ownership of the Beyea stock was reserved by me until the master had made his report.

Opinion

(1) Exceptions to the whole report of the master were filed by the solicitor of the complainant, but after carefully reading, several times, all the testimony that has been taken in this cause, I can find no error in the master's conclusions. The burden of proof is upon the exceptant to show that the master is mistaken. This he has failed to do, and the master's report should be confirmed.

(2) This is a close corporation, all the stock being held by A. Gould Harrison, his wife, and Frederick K. Fish. The suit was properly brought, as was decided in an opinion filed by the Chancellor when sitting as a Vice Chancellor; it being a well-settled rule that a stockholder, desiring relief by way of injunction or accounting for the misconduct of the officers or directors, misappropriation of the property for their private advantage, is not, in all cases, compelled to first ask the corporation to sue, and on its refusal institute suit, making the corporation a party.

(3, 4) If there were a single share of stock held by a person who had not given his consent to the charging off of these overdrafts made by A. Gould Harrison, I should not hesitate to set all the transactions aside; but the Beyea stock has been sold to A. Gould Harrison, and they, therefore, cannot complain, and as I find that Mr. Fish consented to the crossing off of the overdrafts, he is estopped, and there is no one else to complain, as the wife of A. Gould Harrison has stood shoulder to shoulder with her husband. Of course, this conclusion depends upon my finding that Beyea stock was purchased by Mr. A. Gould Harrison with funds belonging to him, which I may say is the conclusion that I have reached.

The bill and the proofs show that from the year 1907, the date of the acquisition of the Beyea stock

by A. G. Harrison, the complainant, Fish, owned 40 shares of the capital stock of the Harrison Milling Company, defendant A. G. Harrison owned 24 shares, and defendant A. L. Harrison 16 shares. These three stockholders were also the only directors of the corporation. Ida M. Beyea owned 15 shares of stock for three or four years prior to 1907; they having come to her from the estate of her father, Hugh Mullen. These 15 shares of stock were purchased by A. G. Harrison in February, 1907, and any rights or claims against the corporation that Mrs. Beyea may have had passed to the purchaser upon the transfer of her stock. She has not complained, and cannot complain, because she is not a stockholder. This 15 shares was purchased by A. Gould Harrison with the check of the defendant the Harrison Milling Company; he claiming that he sold his house and lot in Caldwell to his brother for $2,000, which he then loaned to the company and deposited to the credit of the company in the Bank of Montclair. In my opinion *Fish* v. *Harrison,* 83 N. J. Eq., 533, 91 Atl., 325, I there stated:

"I feel satisfied that the brother of the defendant has told the truth about his part in the transaction."

The wife of A. Gould Harrison testifies that she and her husband told Mr. Fish of the proposed sale of their Caldwell home for the purpose of getting funds to buy the stock, and that Fish was told of the sale, and of the fact that the money had been put in the business until they could get hold of this stock. Fish admits that he suggested to Harrison the purchase of the stock by him, and that he consented that the excess above par of $20 a share, which the stock cost, could be charged off to the expense account of the company. Harrison pro-

duced evidence showing an entry, "A Gould Harrison, $2,000.00," on the stub of the company's check book as of September 19, 1906, and his own paid check for this amount to the order of the company. The books of the bank were produced, and they showed the debit of this amount against Harrison's individual account, and its credit to the company's account. The expert accountant for the complainant admitted in the testimony before the master that there did appear on the check stub, on the date in question, a deposit which included Harrison's check of $2,000.

The manner in which a record of this loan was kept was by means of tickets or slips. Slips of paper, termed "tickets," were kept in the cash drawer. Upon these were placed cash receipts and payments, instead of immediately placing them in the cash book. A loan would be made to the company and entered on a ticket. Upon repayment of the loan, the ticket would be destroyed. Harrison testifies that when he obtained the cash from the sale of his house the company was a little short of funds, and as he did not know how soon he could get the Beyea stock he loaned the money to the company, depositing it in the company's bank account until he had completed negotiations for the purchase of the stock. He further testifies that Coleman made an entry of this $2,000 credit upon a slip, the slip was put in the drawer and that he (Harrison) saw the slip. The whole matter of the stock purchase was gone into, and after the purchase of the Beyea stock for $1,500 the $500 still owing from the company to Harrison was left on the ticket as a credit, and subsequently repaid to Harrison. I am satisfied that the loan was made, and that $1,500 of it was used in the purchase of the Beyea stock.

I shall advise a decree in accordance with these views.

New Jersey Court of Errors and Appeals.

Between

FREDERICK K. FISH,
Complainant-Appellant,

and

THE HARRISON MILLING COMPANY, A. GOULD HARRISON and EVELYN L. HARRISON,
Defendants-Respondents.

APPELLANT'S BRIEF.

This is an appeal by the complainant from so much of a decree of the Court of Chancery, dated April 17, 1917, as adjudges that the defendant A. Gould Harrison is the owner of fifteen shares of stock of the defendant Harrison Milling Company, which were paid for by a check of said company and denies the relief prayed for in the bill of complaint that said stock be adjudged to be the property of the said Harrison Milling Company, and also from so much of said decree as adjudges that $868.58 is the full amount of the indebtedness of the defendant A. Gould Harrison to said company (see Petition on Appeal, Statement of Case, pp. 1 and 2).

The action is a derivative one, brought by Frederick K. Fish, a stockholder of the defendant The Harrison Milling Company for his benefit, and for the benefit of the corporation. The amended bill of complaint (pp. 3 *et seq.*) alleges that complainant is the owner of forty shares of the stock of the said company, which was organized on July 15,

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1899, for the manufacture and sale of grain products; that the total capital stock is eighty shares, of the par value of $100 a share, of which complainant holds forty shares, the defendant A. Gould Harrison twenty-four shares, and the defendant, Evelyn L. Harrison, who is the wife of A. Gould Harrison, sixteen shares. It is also alleged that the complainant purchased his stock in 1903, and was elected a director and president of the company on September 22, 1903, the other directors being the defendants Harrison. It is further alleged in the bill that the defendant A. Gould Harrison drew from the funds of the company various amounts in excess of his salary, of which a part, amounting to $4,113.17, was remitted or released by a resolution passed by the Board of Directors on November 18, 1905, to which the complainant consented; but, by reason of said over-drafts the said A. Gould Harrison is indebted to the defendant corporation in a large amount. It is also alleged in substance that the said defendant A. Gould Harrison purchased fifteen shares of stock of the corporation from one Ida M. Beyea, and paid for the same with the funds of the company. The relief sought is an accounting against the defendant A. Gould Harrison for the alleged over-drafts and the transfer to the corporation by said defendant of the said fifteen shares of stock.

The case was tried before Hon. VIVIAN M. LEWIS, Vice-Chancellor, beginning on July 31, 1912, and continuing at intervals until March 9, 1914. Thereafter further testimony was taken before the Master, after which the Vice-Chancellor rendered his opinion (pp. 595, *et seq.*) in which he found, confirming the conclusion of the Master, that the full amount due from A. Gould Harrison to the company was $868.58, and in which he further found that the fifteen shares of stock were not paid for

by A. Gould Harrison out of the assets of the company. In making this finding the Vice-Chancellor sustained the claim of A. Gould Harrison that he had lent to the company $2,000 and that this $2,000 was repaid in part by the application of $1,500 of the corporate funds to the purchase of the aforesaid stock. The final decree (pp. 12 *et. seq.*) was rendered, as already stated, on April 17, 1917, confirming the report of the Master, adjudging A. Gould Harrison to be the owner of the said fifteen shares of stock, and directing him forthwith to pay to the Harrison Milling Company $868.58. This conclusion was reached notwithstanding the fact that upon all points of conflict the weight of evidence was clearly in favor of the complainant.

The witnesses for the complainant were chiefly the complainant himself and Charles Nasmyth, an expert accountant. The defendant's principal witnesses were the defendant A. Gould Harrison, the defendant Evelyn L. Harrison, the company's bookkeeper Bert T. Tichenor, and an expert accountant, Samuel H. Wenck. The testimony of Mr. Fish, the complainant, is straightforward and was not shaken on cross examination. The defendant A. Gould Harrison was, and still is, treasurer of the company, and for part of the time at least was secretary, and he was in full charge of its business during the entire period under investigation in this action. He testified freely enough on direct examination, but under cross examination he became sulky and reticent. He repeatedly sought to dodge the issue by hiding, so to speak, behind his bookkeepers, one of whom was dead. Finally he virtually refused to answer questions relating to his transactions with the company, meeting every attempt to elicit information with the parrot-like assertion, "The books will show." The books, however, throw little light on the situation, because of

the slipshod manner in which they were kept, and the omissions therein are attempted to be explained by an alleged practice, ridiculous as it may seem, of committing important transactions to slips of paper, and not entering them in the books at all.

The unreliability of the testimony of the witness A. Gould Harrison is further shown by his silly attempt to make out that the complainant, instead of buying stock in the corporation, made a loan to the corporation taking the stock as security merely (pp. 199-201), although this contention is refuted by an entry in the minute book (p. 578, lines 10 to 27), by the fact that the stock was actually issued in his name, and by the further facts that no interest was ever paid to or credited to the complaint on the pretended loan (pp. 255-7, 260), and that no rate of interest was even agreed upon (p. 258). Further refutation is found in the fact that complainant was elected an officer and director of the company, participated to a slight extent in its management, received a salary as president, and participated in one dividend (pp. 255-7). That the transaction was not a loan is also evidenced by the fact that the amount paid by complainant for the stock was full par value thereof, $4,000. Any sensible man who makes a loan on the security of stock demands a security considerably in excess of the amount of his loan, and this stock certainly did not have a market value above par (pp. 254-5). Complainant's son, Lambert H. Fish, confirms his father's version of the transaction that it was a purchase of stock (pp. 452-3). The learned Vice-Chancellor evidently found against the defendant on this issue, but failed to give the falsity of the testimony of Harrison on this point due weight in the consideration of his testimony on other points.

Out of the mass of contradictory and conflicting testimony, this fact above all others clearly stands forth, namely, that the defendants Harrison have succeeded thus far in getting an unconscionable advantage over the complainant. Holding one half the stock they are in a position to reelect themselves each year to the board of directors, or, by causing a deadlock, to continue themselves in office indefinitely as holdovers. In either case they constitute a majority of the board, and the complainant is helpless. They have cut off from him all salary, dividends, or other emoluments, and are enjoying the fruits of the capital invested by him in the business without any compensation whatever to him. Their temper in this respect is fully evidenced by the proceedings of the meetings of July 19, 1910 (pp. 584, *et seq.*), particularly the resolution cutting off all salaries but that of the agent and manager, A. Gould Harrison (p. 589). Further facts appear in the points.

POINT I.

The Trial Court erred in concluding that the money expended out of the treasury of the corporation to purchase the Beyea stock was the repayment of a loan made to the corporation by defendant A. Gould Harrison.

The stock was purchased about February 20th or 21st, 1907, the amount actually paid at this time being apparently $1,970. (See Exhs. DA-3, DA-2, DA-1; pp. 557 and 558; see also pp. 53, 63, 494, 495.)

There is no question but that the payments which were made at this time were made in checks of the

corporation (pp. 62-63), one dated February 15, 1907, to the order of C. S. Hess, cashier, for $462.68 (Ex. C-5, p. 563), one dated the same day to the order of Ida M. Beyea for $90 (Ex. C-6, p. 564), one dated February 21, 1907, to the order of Ida M. Beyea for $337.32 (Ex. C-4, p. 562), and one dated the same day to Ida M. Beyea for $1,000 (Ex. C-7, p. 565).

On the credit side of the account the stock is entered at $1,500, its par value, and the account is balanced by an unexplained item of $525.68 (p. 557).

The explanation given by Harrison is that about September 18, 1906, he lent to the company the sum of $2,000 (p. 225), which remained in the company's hands until the stock was purchased, and that $1,500 of the purchase price was credited on the loan (p. 229), the balance being repaid in some other way (p. 380).

The peculiar fact about this transaction is, however, that *this alleged loan of $2,000 was never entered in the cash book, or any other book of the corporation* (pp. 54-56, 58-59). It is claimed by Harrison that the loan was carried on a ticket or slip of paper, put in the cash drawer or in the safe (p. 225), and that when it had been paid the ticket was destroyed (Id.). The bookkeeper Coleman who was in the company's employ at this time is dead (p. 153), and the contention that this loan was made rests wholly upon the testimony of the defendant Harrison, an interested as well as a discredited witness. It is true that it appears that on September 18, 1906, he did draw his check to the order of the defendant corporation for $2,000, and that that amount was deposited in the banking account of the corporation in the Bank of Montclair; but this circumstance, apart from his own testimony, is wholly insufficient to connect this

transaction with the subsequent use of the corporate funds to buy the fifteen shares of stock from Ida M. Beyea. The entry on the debit side of the cash book, namely: "Feb. 21, 1907 (64), Ida M. Beyea 12 sh stock to A. G. H. a/c ticket on loan $1,500.00," is also insufficient without the testimony of Harrison to explain this transaction or show that this disbursement of the corporate funds for stock was a repayment of a loan. In fact, the testimony of the witness Nasmyth shows that it is capable of several other explanations, and might even have referred to a debit slip (pp. 461, 466-7).

The cash book showed, in September, 1906, an over-expediture, $2,300.28 (p. 57, there erroneously transcribed as $2,328, see p. 94). This apparent over-expenditure was, however, reduced until February, 1907, at the close of which month the book showed a credit balance of $761.73 (Id.). If, therefore, the transaction was a loan, the corporate books tend to show that it was automatically extinguished in five months (pp. 59, 60, 61, 464). Harrison told Nasmyth that the money was kept in the safe (pp. 59, 124, 462), and Mrs. Harrison confirms this (p. 124), which would indicate that the amount was drawn out shortly after the deposit of the $2,000 check, and that when the over-expenditure was cancelled the cash remained in the safe if Mr. Harrison had not used it for his own purposes (p. 61). In this connection it is important to note that *although Harrison testified that he made the loan because the company was short (p. 225), the company's bank account, after this deposit showed a balance of $3,963.40 (p. 117), or nearly $2,000 above the amount of the alleged loan.*

As above pointed out the bookkeeper employed at the period covered by these alleged transactions is dead, and the only competent testimony as to a custom of entering credits on slips instead of in

the books is that of Harrison himself. The testimony of the witness Wenck on this subject is only hearsay from Coleman. Wenck says he saw the tickets or slips, but never read one (pp. 153-4, 161-2, 507, 520-22, 535). Tichenor, the bookkeeper, from Coleman's death to the time of the trial, was able to identify only debit slips, and slips representing bad checks, expected to be made good (pp. 170, 181-2, 407-8, 567). Indeed, *he testified that the record of money paid in was not kept on slips* (pp. 182-3, and see pp. 177-8).

It is of course very customary for a corporation making payments of comparatively small sums to keep records thereof by the ticket system; but it is not consistent with business experience or common sense that a man making an advance of $2,000 from his own funds to a corporation would be content that the evidence of the indebtedness of the corporation to him should rest merely in a ticket kept in a drawer, and that there should be no record whatever of the matter on the corporate books of which he himself had control.

Harrison never told complainant about the alleged loan (pp. 46, 426), nor about the sale of his house (p. 437), from which source he claims to have received the money alleged to have been so lent.

Nasmyth testifies that Harrison was at first unable to explain the cash book item of $1,500 for stock to A. G. H., above quoted; and only produced his check stub showing the $2,000 check to the company as an after thought (pp. 55, 74).

Complainant knew nothing about the payment for the stock out of the corporate funds until Mr. Nasmyth made his report (p. 47). This was not earlier than September or October, 1910 (p. 49). Complainant did not know this fact, therefore,

when he signed the certificate of stock to A. G. Harrison for nineteen shares dated February 28, 1910 (p. 561). The statement of the witness J. H. Harrison that the parties seemed to know all about this at the meeting on March 23, 1910, is entirely too vague to be of any probative force, even if competent (p. 481).

Complainant consented that the premium of $2,000 a share of which A. Gould Harrison said he had to pay in addition to the par value of nineteen shares of stock should be paid out of the company's funds (p. 41), but he never authorized the payment of anything beyond that (p. 44).

Another fact worthy of note in this connection is the admitted practice of the defendant A. Gould Harrison of using the money of the corporation for his own purposes. When this fact is considered together with all the other circumstances it seems much more probable that Harrison's payment of $2,000 to the corporation was to make good some previous withdrawal than that it was a voluntary loan to a corporation which was not, apparently, at the time of such payment to it, in any pressing need of funds.

POINT II.

The Trial Court was not warranted in concluding that only $868.58 was due from A. Gould Harrison to the corporation.

The testimony as a whole shows that the defendant, A. Gould Harrison, conducted the corporate business in a loose and haphazard manner. He was accustomed to draw from the company's funds such amounts in addition to his salary as he saw fit. He claims that he advised complainant of this practice before the latter made his investment, and that complainant assented thereto (pp. 108, 202-3). Under cross-examination he testified on this point as follows:

> "Q. You told him all about it? A. I told him the conditions I had had previously.
>
> "Q. You told him how you were to have all the money you needed out of the income of this corporation? A. What the business could stand.
>
> "Q. That was all to be determined by your good judgment, wasn't it? A. That was the understanding.
>
> "Q. But if Mr. Fish came in, it was your good judgment that was to determine how much money you were to drawn in excess of your salary? A. He agreed to leave it to me.
>
> "Q. Any amount you wanted you might take? A. Yes, sir, that the business could stand.
>
> "Q. How much did you take then? A. I would have to look at the books to verify that.
>
> "Q. Can not you tell, approximately, how much you took in excess of your salary? A. No, sir; I knew at the time, but I don't know now.
>
> "Q. How did you take it? A. In various ways, checks and cash.

"Q. Any way you wanted it? A. Sure.

"Q. And any amount you wanted? A. No, sir.

"Q. Any amount there was in the cash drawer or in the bank? A. No, sir.

"Q. How did you determine how much you would take? A. What I needed for personal use.

"Q. Any amount you needed for your personal use? A. What was necessary for my personal use—I will put it that way.

"Q. Or for the use of your household? A. Yes, sir.

"Q. Or for your club? A. Yes, sir—that is personal.

"Q. Or your horse and carriage? A. Before that time, I owned my own rig.

"Q. The livery stable bill was paid out of the funds of the company? A. Yes, sir" (pp. 236-7).

Complainant denies that he ever assented to any such practice (p. 4); and certainly the weight of evidence is in his favor, for it is incredible that any sane man would consent to such a ridiculous arrangement, especially a man of the long business experience of the complainant. Complainant's son also supports complainant's testimony in this respect (p. 470).

The subject of overdrafts was first brought to complainant's attention on or about November 18, 1905, over two years after he had made his investment (p. 4). At this time there was a meeting at Montclair, at which Mr. Harrison informed complainant that he had overdrawn his account $4,500 or $4,600; and it was then agreed that such overdraft should be cancelled or remitted, and that Harrison's salary should be increased from $20 to $40 per week (p. 6). Complainant was at the same time voted a salary of $1,200 a year. The amount of the overdraft at this time, as shown by Harrison's personal account in the books, was $4,113.17

(p. 50). But between November 18th and December 1st, 1905, he made additional overdrafts amounting to $439.46 (pp. 50, 53), and later he caused a resolution to be entered on the minute book under date of November 18, 1905, authorizing a credit to him of $4,552.63, the aggregate of these two amounts (pp. 581-2). *Complainant first saw the minute book in October or November, 1909 (pp. 6-7, 423), and did not know until then of the inclusion of these additional items, and never assented thereto.* The court below was, therefore, in error in allowing the $439.46 as a credit to Harrison.

After this matters ran along, until the fall of 1909, when complainant moved to Montclair to take a more active part in the business. Harrison told him about this time that his account was overdrawn from $8,000 to $10,000 (p. 7). This led complainant to make investigations (pp. 7, 30) with the result that a rupture came about in the following spring (p. 10), and the suit was started.

Complainant found among other things that the minute book contained entries of meetings at which other subsequent overdrafts had been crossed off, one under date of September 2, 1907, $386.74, and another under date of September 8, 1908 (p. 583), in which the amount purporting to be cancelled is left blank; but in the minutes of the meeting of July 19, 1910, the amount is stated to be $2,016.55 (p. 591, and see p. 216). Complainant states unqualifiedly that he never participated in or knew of any meeting subsequent to the one of November 18, 1905, at which any overdrafts of A. Gould Harrison were crossed off or remitted, nor did he otherwise consent thereto (pp. 8, 24, 38-9, 423-4). At the date of the alleged meeting of September 8, 1908, complainant was on his vacation at Summit, New York, and was not in New York City or New

Jersey between June 15 and September 28 of that year (pp. 39, 199, 455). It is claimed by Harrison that these meetings were held at some unnamed date in October or November, and the minutes antedated at the suggestion of complainant, so that they might appear to have been held as near as possible to the date of the annual meeting (pp. 210-11, 358). The absurdity of this claim is evident when it appears that the proper date for the annual meeting was July (p. 358). Why, then, if the minutes were to be antedated at all, were they not dated as of July, instead of September?

The unreliability of these minutes and of the testimony of Harrison is further illustrated by the blank appearing in the minutes of the alleged meeting of September 8, 1908, above referred to. Harrison's first explanation of the blank was that the bookkeeper might have been away or something of the kind (p. 214). Later he claimed that at or before every meeting where overdrafts were crossed off, a memorandum of the exact amount was produced (pp. 243, 292, 354-5). He especially said that he showed the item of $2,016.55 (pp. 292-294). If this were true, why should the amount have been left blank in the minutes?

Mrs. Harrison's testimony on these points is so vague as to be of no value. Indeed, when complainant visited the Harrison home Mrs. Harrison was unconscious that any meeting was in progress. She considered it a friendly visit to her (pp. 113, 129).

The attempt to show that complainant knew of the credits for overdrafts by examination of the books fails lamentably. Complainant examined no book except the sales book (pp. 35, 440-441). This was the only book he could understand (pp. 36, 442). He first saw the minute book in 1909 (pp. 6-7, 423). He never saw the A. G. Harrison

account in the ledger (pp. 36-7), and he received his first statement thereof in November, 1909 (p. 37). The testimony as to his examining the books is for the most part of the vaguest sort. But even if he did examine them, and found out all about these unlawful transactions, and even if he seemed to assent thereto, his *ex post facto* assent without that of consideration would not be binding upon him or upon the corporation. Therefore all this testimony about his consulting the books is wholly immaterial. It will be noted in this connection that the minutes dated September 2, 1907, and September 8, 1908, purport to have been approved the same day they bear date (p. 583), so that they would not necessarily be read at any subsequent meeting.

It further appears that Harrison has credited himself with an item of $2,000 under date of July 31, 1909, entered in one place as salary (p. 560) and in another as "Loss & Gain" (p. 591), for which no minute appears in the book. His only explanation is that he made minutes which he did not enter in the book (pp. 296-7). Made them in his head, probably, as the necessities of his case required.

For these reasons the Court below was in error in allowing to Harrison the credits of $439.46 (part of the credit of $4,552.63), $386.74, $2,016.55 and $2,000, making a total of $4,832.75, with which he should have been charged in addition to the $868.58, making a grand total of $5,701.33.

It is claimed, however, that Harrison is entitled to some additional credit because he drew *qua* salary only $20 a week for about four years after the agreement of November 18, 1905, fixing his salary at $40 a week. Mr. Nasmyth does not agree to the fact that he drew only $20 a week, claiming that the $40 was charged under two accounts (pp. 499-500), and this claim seems to be sustained by

Mrs. Harrison (p. 115). It is claimed that he should be credited with $20 a week for 210 weeks, making a total of $4,200 between November 18, 1905, and November 27, 1909 (p. 539). Even if this offset were to be allowed in full, the account charged in the decree would still be inadequate; but it appears that Harrison has been credited with at least a part of this claim for salary—see items of July 31, 1906, $680, and August 1, 1907, $1,040 (p. 591). This would reduce the offset from $4,200 to $2,480.

It is further claimed that Harrison was entitled to a credit of $320 because he did not begin to draw his salary of $250 a month, agreed upon September 30, 1909 (p. 583), until December 1, 1909 (p. 531). The answer to that is that there appears by his own testimony to have been some adjustment to be made before the increase of salary went into effect (pp. 391-3).

POINT III.

The acts of the directors of the defendant corporation in charging off overdrafts of the defendant A. Gould Harrison were void.

The directors of the corporation stand in a fiduciary relation towards the stockholders, and are bound to exercise the most scrupulous good faith. As to them the doctrine of *uberrima fides* applies.

In the case at bar, the defendant, A. Gould Harrison, bases his claim of non-liability to refund admitted overdrafts on an alleged remission of his indebtedness by the directors of the corporation. As there were only three directors of the corporation, of whom complainant was one, and as complainant did not assent to any such remission ex-

cept in a single instance, it follows that in the other instances, if the indebtedness was remitted at all, it was remitted not only by an act of the board of directors in which the defendant A. Gould Harrison participated, but by *an act to the consummation of which his participation was necessary.* It follows that if his contention as to the passage of resolutions remitting this indebtedness be true, *he, by his own affirmative act, gave away to himself the corporate funds.* This is a clear misappropriation, and upon well settled principles the act of misappropriation is necessarily void.

In *Twin-Lick Oil Co.* v. *Marbury,* 91 U. S., 587, the United States Supreme Court, by Mr. Justice MILLER, said:

> "That a director of a joint-stock corporation occupies one of those fiduciary relations where his dealings with the subject matter of his trust or agency, and with the beneficiary or party whose interest is confided to his care, is viewed with jealousy by the courts, and may be set aside on slight grounds, is a doctrine founded on the soundest morality, and which has received the clearest recognition in this Court and in others."

In *Gardner* v. *Butler* (30 N. J. Eq. (3 Stew. Eq.), 702, this Court said:

> "That directors of a company shall not be permitted to enter into engagements in which they have a personal interest conflicting with the interests of those whom they are bound by fiduciary duty to protect, and that no consideration of their apparent or intrinsic fairness will induce a court, either of law or equity, to enforce them against the resisting *cestui que und,* is well settled" (30 N. J. Eq., 721).

In *U. S. Steel Corporation* v. *Hodge,* 64 N. J. Eq. (19 Dick. Ch.), 807, this Court again said:

"The rule that directors cannot lawfully enter into a contract, in the benefit of which even one of their number participates without the knowledge and consent of the stockholders, is so firmly entrenched in our jurisprudence that it is not open to debate" (64 N. J. Eq., 813).

See also:

Schaffhauser v. *A. & S. Brewing Co.,* 218 Pa. St., 298 (involving an increase of salary to the president of a corporation);

Godley v. *Crandall & Godley Co.,* 153 N. Y. App. Div., 697, 710; 212 N. Y., 121;

McCourt v. *Singers-Biggur,* 145 Fed., 103, 107.

It is, of course, elementary, that one standing in a fiduciary relation is bound to show that be acted in good faith, in every respect, in his dealings with the subject of his trust. Not only did the defendant, A. Gould Harrison, fail to show that he acted in good faith, but such proof was in the very nature of the case impossible; for *good faith and misappropriation of trust funds cannot exist together.*

For the above reasons the decree of the Court of Chancery should be set aside.

Respectfully submitted,

EDWARD MAXSON,
Solicitor for Complainant.

[1817]

The Dispatch Printery & Bindery Corporation
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New Jersey Court of Errors and Appeals

Between

FREDERICK K. FISH,
Complainant-Appellant,

and

THE HARRISON MILLING COMPANY, A. GOULD HARRISON and EVELYN L. HARRISON,
Defendants-Respondents.

On bill, etc.

Brief for Respondent.

Argument in this matter was had before this court at the March, 1918, Term. Appellant's brief had been served upon the attorney of the respondent two days before the argument; and the court, upon motion, gave opportunity to the attorney of the respondent to submit a brief, and also to complete the state of the case by printing omitted essential parts thereof, which are presented herewith in a separate book entitled "Addendum to State of Case."

Issues.

The relief sought in the amended bill is, *first* that an account be taken of the amount due from defendant, A. Gould Harrison, to Harrison Milling Company, because of alleged improper disposition of the funds of the company; and, *second*, that Harrison transfer to the company the fifteen shares of stock alleged to have been purchased by him from Ida M. Beyea with the funds of the corporation. The answers of the defendants join issue on the material alle-

gations of the bill. The case was exhaustively tried before Vice Chancellor Lewis; and at one stage of the proceeding was referred to Special Master Harry N. Reeves to state an account between Harrison and the corporation, and to take testimony and report on the question of the title of the fifteen shares of stock in issue. The Master was directed, in making his report, to use and consider all of the testimony theretofore taken before the court. The Master went into a thorough examination of the books and records of the defendant corporation, took considerable testimony from the expert accountants produced by the parties, analyzed all the testimony in great detail, heard argument by counsel, and reported: (Addendum p. 6).

> "That all of the resolutions in the minute book of the Harrison Milling Company, charging off the overdrafts of said A. Gould Harrison, and authorizing additional salary from time to time are valid, and that their intent and purpose are carried out in the account books of the company at hand and under examination by me."

The Master also reported, in effect, (Addendum pp. 6, *et seq.*) that Harrison was indebted to the corporation to the extent of $868.58. It will be argued later, that the Master's report can only be interpreted on the basis of his conclusion that the title of Harrison to the fifteen shares of the Beyea stock was unimpeachable.

Exceptions going to the whole report of the Master were filed by complainant, (Addendum pp. 11, *et seq.*) and were elaborately and vigorously argued by his solicitor before the Vice-Chancellor, who afforded every opportunity for thorough presentation of the matters in issue; and who, after most careful consideration, confirmed the Master's report (p. 598). Final decree was entered

on or about April 16, 1917 (pp. 12, *et seq.*) adjudging the title of the Beyea stock in Harrison and directing him to pay the corporation the amount found due by the Master from him, viz, $868.58.

The appellant contends that the evidence does not support the findings of the court below; and he seeks, in the early part of his brief, to discredit Harrison's testimony in toto and to urge, in effect, that Harrison's testimony is false because it differs in many respects from the testimony of the complainant. It will be shown herein that complainant did not meet the burden of proof, and that the facts and the law support the decree of the Court of Chancery. Appellant whines because the Board of Directors of the defendant corporation is under the control of Harrison, and he seeks to have Harrison's title to the Beyea stock set aside so that the complainant may get control of the corporation and obtain relief in this court which was properly denied him in the court below. The mere fact that the defendant corporation is under the control of a person or persons other than complainant, of itself, cannot be urged as a ground for relief.

Point I.

The Decree of the Court of Chancery adjudicating the title of Harrison to the Beyea stock should be affirmed.

(*a*) *On September 19, 1906, Harrison loaned the Harrison Milling Company, $2,000.00.*

The testimony shows that, prior to September, 1906, Harrison was negotiating with the Beyeas for the purchase of the corporate stock of the Harrison Milling Company, owned by

them. To put himself in funds for this purpose, Harrison sold his house and lot in Caldwell to his brother. The proceeds of this sale, two thousand dollars ($2,000.00), were loaned by Harrison to the company and deposited to the credit of the company in the Bank of Montclair (p. 225). Convincing evidence of this fact is the entry "A. Gould Harrison $2,000," on the stub of the company's check book as of September 19, 1906 (p. 152), and his own paid check (Ex. D. 2, p. 566) for this amount to the order of the company. The pertinent ledgers and books of the bank were produced in court, and they showed the debit of this amount against Harrison's individual account and its credit to the company's account (Ex. D. 3½, D. 4½, D. 4¾, p. 556). See also testimony of Cashier of Bank of Montclair (p. 119, *et seq.*) The attempt was made before the court by Mr. Nasmyth, the expert accountant of the complainant, to meet this state of facts and to cast a cloud of mystery and suspicion over the whole matter, by showing that no such loan had been made to the company by Harrison, and that no such deposit had been made by him in the account of the Company, although he did reluctantly admit that there had been an "over expenditure of cash" between the making of the loan and its repayment (p. 60). Before the Master, however, Nasmyth was forced to admit that there did appear on the check stub, on the date in question, a deposit which included Harrison's check of $2,000 (p. 491). This is in direct conflict with Nasmyth's statement before the court, where he says that there was no such entry on the stub of the check book (pp. 54, *et. seq.*) Nasmyth further admits before the Master (p. 493) that the $1,500 entry on the books of the corpora-

tion is a "belated entry of $1,500 of the $2,000 loan alleged to have been loaned in the middle of September." Nasmyth positively denied before the court, the existence of any record of the Harrison loan in the books of the company, but testified before the Master as follows (p. 497):

> *"There is no doubt Mr. Harrison's check of $2,000 went into the account of the company; that shows on the bank record and also on the stub of the check book."*

(*b*) *The original record of Harrison's loan was kept on a "ticket" or "slip."*

The next important fact in this connection is the manner in which the record of this loan was kept; and this involves a consideration of the "ticket" or "slip" practice then and now in use in this and many other corporations. However reprehensible this practice may be considered by an expert accountant, it was and is the *modus operandi* of the Harrison Milling Company. A Mr. Coleman was the bookkeeper of the company from 1899 until his death in December, 1907, when he was succeeded by a Mr. Tichenor (p. 205). Each of these men had entire charge of the corporate books, and each was admittedly capable and honest. Harrison and Fish had little, if anything, to do with the bookkeeping of the corporation. Slips of paper termed "tickets" were kept in the cash drawer (pp. 224-225). Upon these were placed cash receipts and payments, instead of immediately placing them in the cash book. A loan would be made to the company and entered on a ticket. Upon repayment of the loan the ticket would be destroyed. Sample slips were put in evidence (p. 567). Tichenor testifies in detail as to this

"slip" or "ticket" practice (p. 177, *et seq.*) and Mr. Wenck (p. 162), expert accountant for the defendant, was familiar with the practice because of his friendship with Mr. Coleman, and his natural interest in bookkeeping practices. Harrison testifies (p. 225) that when he obtained the cash from the sale of his house, the company was a little short of funds; and as he did not know how soon he could get the Beyea stock, he loaned the money to the company, depositing it in the company's bank account until he had completed negotiations for the purchase of the stock. He further testifies that *Coleman* made an entry of this $2,000 credit upon a slip, the slip was put in the drawer, and that he, Harrison, saw the slip (pp. 225, 311). Cash book folio 382 (p. 558), contains the significant debit entry in Coleman's handwriting "Ida M. Beyea, 15 Sh. Stock to A. G. H. a/c *ticket on loan,*" which can only be interpreted on the assumption of a ticket or slip entry of Harrison's loan to the corporation (p. 156).

(*c*) *Fish knew of the purchase of the Beyea stock by Harrison and suggested it.*

Harrison (pp. 229, 309, *et seq.*) testifies that in October or November, 1906, he informed Fish of the loan of $2,000 to the corporation, and that, during the negotiations for the purchase of the stock he often talked with Fish about it. Mrs. Harrison (pp. 123, *et seq.*) swears that she and her husband told Fish of the proposed sale of their Caldwell home for the purpose of getting funds to buy the stock, and that Fish was told of the sale and of the fact that the money had been put in the business "to use until we could get hold of this stock." Fish, in his direct examination, denies all knowledge of the

Harrison loan of $2,000, except as reported to him by Nasmyth (pp. 46, *et seq.*), and apparently denies all knowledge of the sale of the Caldwell property. Fish (p. 41), admits that he suggested to Harrison the purchase of the stock by him, and that he consented that the excess above par of twenty dollars ($20) a share, which the stock cost, could be charged off to the expense account of the company. As the testimony shows, this premium is included in the item of $525.68 journal entry Ex. D. A. 2, p. 557. Fish, in his rebuttal testimony, states that he knew of the negotiations for the purchase of the stock "sometime before he (Harrison) told me that he had purchased it; I don't remember how long" (p. 437); and that he had two or three conversations with Harrison concerning the purchase. Fish and Harrison were then on intimate social and business terms; and what could be more reasonable than Fish's continuing interest in the purchase of the Beyea stock by Harrison, after he had admittedly suggested the purchase, and the truth of Harrison's statement, corroborated by his wife, that Fish knew everything about the transaction.

(*d*) *The books of the Milling Company establish the fact of the loan and its repayment—and validate Harrison's title to the stock.*

The following checks of the company were drawn in payment of the purchase price of the Beyea stock:

(Ex. C. 5) Feb. 15, 1907, C. F. Hess, cashier, (p. 563)	$ 462.68
(Ex. C. 6) Feb. 15, 1907, Ida M. Beyea, p. 564)	90.00
(Ex. C. 4) Feb. 21, 1907, Ida M. Beyea, (p. 562)	337.32

(Ex. C. 7) Feb. 21, 1907, Ida M. Beyea,
(p. 565) 1,000.00

$1,890.00

The pertinent cash book, journal and ledger entries of the transaction, made by Coleman, the bookkeeper, are all important. They are as follows:

Cash book credits, fol. 383 (Ex. D. A. 1, p. 558).

Feb. 19, 1907 (64) Ida M. Beyea
a/c stock 15 shares 462.68
Feb. 19, 1907 (64) Ida M. Beyea,
Int. & div. bonds (1905)..... 90.00
Feb. 21, 1907 .....$ 337.32
Ida M. Beyea 1,000.00 1,337.32

$1,890.00

Debits, Fol. 382 (p. 558).
Feb. 21, 1907 (64) Ida M. Beyea
15 sh. stock to A. G. H. a/c ticket
on loan $1,500.00

Journal fol. 524 (Ex. D. A. 2, p. 557).
Aug. 1, 1907, Mdse. E. M. Beyea,
expenses and prem. on stock (64) 525.68

Ledger, 1906, folio 64 (Ex. D. A. 3, p. 557).

E. M. Beyea.

1906				1907			
June 1	Balance	O.L. 58	41.68	Feb. 21	15 Sh stock Ida M.	382	1500.00
Oct. 14		323	14.00	Aug. 1		524	525.68
1907							
Feb. 18		383	80.00				
" "	Ida M.	"	552.68				
" 21	" "	"	1337.32				
			2025.68				2025.68

As appears from the above entries, the premium on the stock purchased and other minor expenses were charged against the merchandise

account. The whole matter was closed through the Beyea account on the ledger. Why this was done in this manner, only Mr. Coleman knows. Harrison testifies that he did not know, until shortly before the matter came to court, of the method of closing the account (p. 229). Suffice to say, that the books clearly explain the transaction; and the entry in the cash book *"15 sh stock to A. G. H. a/c ticket on loan,"* made in Coleman's handwriting, fully corroborates Harrison's statement that the loan was made by him to the corporation to be applied on the stock purchased by him; and that the four checks of the corporation issued in February, 1907, in the acquisition of the stock, constituted a re-payment to him, to that extent, of the loan in September, 1906, made by him to the company. In view of all the surrounding facts and circumstances proved in this case, no other interpretation has been or can be put on the cash book entry *"15 sh. stock to A. G. H. a/c ticket on loan"* than the interpretation of the expert, Wenck, made as a result of his investigations, and the examinations of the account (p. 156).

> "Q Now, in view of this custom which you have thus explained, how do you interpret the phrase on page 382 of this cash book, 'Ida M. Beyea, 15 sh stock to A. G. H. a/c ticket on loan.'
>
> A There must have been a ticket in existence from which this amount was deducted when this entry was made."

See also testimony of Wenck (p. 507).

The whole matter of the stock purchase was gone into in great detail on the cross examination of Harrison; and it developed that, after the purchase of the Beyea stock for $1,500, the $500 still owing from the company to Harrison was left on the ticket as a credit, and subse-

quently repaid to Harrison. Vice Chancellor Lewis finds (p. 600) *"I am satisfied that the loan was made, and that $1,500 of it was used in the purchase of the Beyea stock."* Whether or not this loan was entered on a slip, it has been conclusively proven that the loan was made and that $1,500 of it was used in the purchase of the Beyea stock. This must have been the case, because both expert accountants admit that the cash equilibrium was restored after the purchase of the stock (pp. 58, 508), and that the books have been ever since in balance. The company has lost nothing by the transaction; and the stubborn attempts of Nasmyth to mystify a simple state of facts by suggesting that Harrison embezzled the funds of the corporation to the amount of the loan, are abortive.

The appellant, in his brief, assumes that it was the admitted practice of defendant, A. Gould Harrison, to use the money of the corporation for his own purposes, and seeks to argue from this premise that it is, therefore, more probable that Harrison's payment of $2,000 to the corporation was to make good some previous withdrawal. Harrison positively states that the purpose of his loan to the corporation was to provide a fund for the ultimate purchase of the Beyea stock; and an examination of the books of the corporation shows that on September 20, (1906), the time of the loan by Harrison to the corporation, there was a gross debit against Harrison on his individual ledger account of $105.44. In February, 1907, the time of the stock transaction, the debit balance against Harrison on his drawing account was $428.89, but this debit balance was taken care of by the credit of $1,040.00, on account of salary made August 1, 1907. The accuracy of the corpora-

tion books has never been questioned, and neither the searching examinations of the expert accountant nor the ingenuity of counsel have been able to disclose that Harrison drew one penny from the corporation, except as shown on the books, which were always open to inspection by Fish and his agents. The books speak for themselves, and why should Harrison loan or pay the corporation $2,000 to meet a debit of something over $400.00 on his drawing account. The important issue in this matter is the fact of the loan, which is admitted. Merely because the company's bank account showed a balance, after this loan, of $3,963.40 (p. 117), is no basis for the conclusion urged by the appellant that the company was in no need of funds, because it does not appear what the outstanding obligations of the corporation were at that time, and for what purpose or how soon the cash balance of the corporation was spent. The appellant's premise is without foundation, and, therefore, his conclusions are without merit.

(*e*) *Harrison's title to the Beyea stock is good.*

It is elementary that advances may be made by directors to their corporations, and that such advances may be satisfied. Mr. Justice Dixon, speaking for the Court of Errors and Appeals in *Stewart* v. *Lehigh Co.*, 9 Vroom, 505, at p. 522, holds that

> "a director of a corporation may have rights not arising out of express contract—such as the right—to have money which he has loaned it repaid to him."

This exception to the rule applicable to express contracts is approved in *Marr* v. *Marr,* 3 Buch., 643 at p. 649, *et seq.*

In *Gardner* v. *Butler,* 3 Stew. 702, at p. 712, the Court uses the following language:

> "There must be many things which directors can do for their individual benefit which are binding upon the corporation of which they are directors. If they have advanced money, I cannot doubt they may pay themselves with corporate funds."

See also *10 Cyc.,* 812 and cases cited; and *Thompson on Corporations,* 2d Ed., Sec. 1247.

Thompson, after approving of the rule, says:

> "It cannot be maintained that any rule forbids one director among several from loaning money to the corporation when the money is needed and the transaction is open and otherwise free from blame * * *."
>
> "Such a doctrine (that loans cannot be made by directors), while it would afford little protection to the corporation against actual fraud or oppression, would deprive it of the aid of those most interested in giving aid judiciously, and best qualified to judge of the necessity of that aid, and of the extent to which it may safely be given."

Stokes v. *Stokes* (91 Hun. 605) 36 N. Y. Supp. 350.

Defendant Stokes was president of Hoffman House, and complaint is that he used for his own use corporate funds.

> Page 354: "We know from common experience—and must therefore take notice of the fact—that it does frequently happen that the affairs of corporations require at times the advancement of sums of money by such officers which are clearly for the benefit of the corporation. Where such moneys are advanced, it is not wrongful for the person making such advances to withdraw from

> the corporation, when its treasury will permit, enough to reimburse him therefor; and such transactions we do not think would expose the officer or director occupying such a relation to the corporation to a successful action being maintained against him for misconduct."

The transaction in this case, in essence, would have been the same if the corporation check had been drawn to the order of Harrison, who then indorsed it to the seller of the stock; or if the check had been drawn to Harrison's order, deposited in his individual account, and a new check drawn by him to the seller of the stock. Harrison's intent was to purchase the stock with the moneys which he had loaned to the corporation. The stock transaction stood by itself and was closed by Coleman, the bookkeeper, through the Beyea account as a separate transaction.

The complainant urges "misappropriation of funds" in the purchase of the stock. However, before the court can disturb the transaction in question, actual fraud must appear. The burden of showing this fraud is upon the complainant. There is no claim in the bill that, as a result of this purchase, Harrison's stock ownership was increased, or that by reason of this purchase, Fish's position in the corporation was injuriously affected. Fish knew as much as Harrison about the affairs of the corporation, and particularly about the holdings of the corporate stock. He admits knowledge of Harrison's intention to purchase, and the purchase of the stock, and can not now allege fraud which came about as a result of the change in stock ownership, particularly when the bill does not refer to it. He knew the effect of such purchase; he acquiesced in it according to his own

testimony, and is now estopped from setting up fraud on such a ground.

The narrow question is did the corporation at the time of the purchase of stock repay to Harrison the loan which he had previously made to the corporation? Harrison had a legal and moral right to purchase the stock of the corporation, either from Beyea, Fish, or anybody else, irrespective of the effect of such purchase upon the stockholdings of Fish or any other stockholder. If the court is satisfied that the corporation repaid Harrison his loan, and that this repayment was used by Harrison in the purchase of the Beyea stock; or if the court is satisfied that the corporation purchased the stock and used it to repay the loan, this unquestionably validates Harrison's title to stock which he has held and voted for a number of years. According to the testimony, Fish was continually examining the books. He knew of Harrison's modest financial ability. Where did he suppose Harrison was getting the money with which to buy the stock if he did not realize it came from the very source it did? Is it credible that he supposed the company was paying for this stock, when he knew of Harrison's intent to buy the stock, and when he must have seen the entries? Under what possible construction can the entries found in the cash book and ledger be explained, except by the use of a portion of the very funds which Harrison had previously loaned to the company? The method adopted by Coleman in closing this transaction was unusual, but it clearly shows that the purchase money was a part of the Harrison loan, and that this loan was carried on a ticket, where it was identified and set aside to be used, as it was used, for a particular object. How other-

wise can we explain the cash book entry *"15 shares of stock to A. G. H. a/c ticket on loan $1,500?"* Coleman, now dead, who made the entry knew all about the transaction; and there was no reason for him to make a book entry which did not set forth the facts. This he did. The testimony of witnesses may conflict, but Coleman's record of the transaction is accurate, immutable and unchanged.

Meanwhile, Fish had "demanded" equal representation on the board of directors. This demand was refused by Harrison. Fish employed counsel and several conferences were held, culminating in the one at the office of Harrison's brother in March, 1910, fully detailed in the evidence of both Harrison and his brother. Up to this time Harrison had never received from the company the new certificate for the Beyea stock, because it had not been signed by Fish, who was the president of the company. The title of Harrison to the Beyea stock was then and there discussed, and Harrison told Fish about the money he had loaned to the company, and about his withdrawal of moneys from the company for the purchase of the stock (p. 221, *et seq.*). J. H. Harrison testifies (p. 486) that

> "the details of the transaction by which the stock was acquired were gone into * * * before he (Fish) actually signed the certificates."

Therefore Fish signed Harrison's certificate as president of the corporation, with full knowledge of all the facts, and cannot now question Harrison's title.

The $2,000 loan, admittedly made by Harrison in 1906 to the Milling Company, has not been repaid to him, unless the court finds that it was repaid at the time of the stock transaction. The

Master must have concluded that the loan had been repaid by the stock purchase. Otherwise, in stating the account, he would have given Harrison credit for the $2,000. This he did not do. The Master was directed by the court to consider all the testimony in making his report; and his report can only be interpreted in the light of the Master's conviction that the title of Harrison to the fifteen shares of stock was unimpeachable. The Vice-Chancellor and the Master have both found in favor of Harrison on this point; and it is insisted that the testimony clearly supports their findings.

Point II.

Complainant consented to and acquiesced in Harrison's withdrawals, and is estopped to deny the validity of corporate resolutions concerning them.

(*a*) *The amount and character of Harrison's withdrawals.*

The bill and the proofs show that at the time of the filing of the bill, and from the year 1907, the date of the acquisition of the Beyea stock by A. G. Harrison, complainant Fish, owned forty shares of the capital stock of the Harrison Milling Company, defendant A. G. Harrison owned twenty-four shares, and defendant E. L. Harrison sixteen shares. These three stockholders were also the directors of the corporation. Ida M. Beyea owned fifteen shares of stock for three or four years prior to 1907, they having come to her from the estate of her father, Hugh Mullen. These fifteen shares of stock were purchased by A. G. Harrison in February 1907, and any rights or claims against the

corporation that Mrs. Beyea may have had passed to the purchaser upon her transfer of her stock. She has not complained, and cannot complain, because she is not a stockholder.

The complainant, furthermore, does not question the validity of the resolution of November 18, 1905 (pp. 581-2), crossing off all accumulated drawings of defendant Harrison. The withdrawals of defendant Harrison are debited against him in his individual ledger account, and credits to balance also appear in this account. It must be borne in mind, in this connection, that Harrison, at this time, was drawing $20 a week on the salary account. Fish admits that Harrison was entitled to $40 a week; and, as the exhibits in the case clearly show, the debits on Harrison's drawing account are largely covered by the salary credits, to most of which Fish admits Harrison is entitled. The expert accountants and the Master agree that the drawing account shows debits of $7,113.62 (Addendum p. 5.) If Fish's contention is correct, that Harrison was entitled to $40 a week, then under his own theory, there should be a credit for a period of approximately four years after December 1, 1905, at $20 a week. This would amount to approximately $4,000.00 and leave open for question approximately $3,000.00.

The proofs all tend to show that Harrison's drawings were not loans, but advances on his "drawing account." The gross debits from December 1, 1906, to August 23, 1911, are admittedly $7,113.62. If to this amount be added the sum of $4,000 drawings by Harrison from week to week, for two hundred weeks, in the "salary account" we will have a gross amount of $11,113.62. (Addendum p. 8.) This was the amount received by Harrison for services to the

corporation for approximately four years. This would make his average annual compensation approximately $2,800. When the amount and character of the services performed by Harrison for the corporation and the volume and success of the business under unusual conditions which have obtained of late years in the milling business are considered, it must be conceded that an annual compensation of about $2,800, is to say the least, no more than he was entitled to. For twenty years he had taken only a very moderate salary, and the corporation had developed from a weak venture, with very little capital and no credit, into one of substantial resources and unquestioned credit. Harrison's withdrawals were open and known to all; and, what is more, never affected the solvency of the concern.

While the method of keeping the books may be reprehensible from an accountant's point of view, the withdrawals of Harrison cannot be regarded as misappropriations or as a conversion of corporate funds. During the long period of Mr. Mullen's connection with the corporation, and several years before 1903 when Fish became a stockholder, the same system was followed. Harrison, by agreement with Mr. Mullen, received a weekly payment of $20 on the salary account, and also was permitted to make reasonable withdrawals on his drawing account. When Fish came into the corporation in 1903, Harrison's drawing account showed a debit of about $1,400 (p. 104). Fish was made aware of this situation and consented to it (pp. 103, 202, 207). Can it be supposed that Fish expected Harrison to receive a salary of but $20 a week and devote all of his time to the affairs of the corporation, when he, Fish, received $1,200 a year for doing practically nothing?

Fish testifies that this $1,200 was salary, Harrison says that it was interest on Fish's loan of $4,000. In either event, it was a very tidy return and supports our contention that Fish agreed to a continuation of the making of reasonable withdrawals by Harrison. The testimony of Harrison and his wife, supported by the books, is that these matters were all explained to Fish when he came into the corporation (pp. 107, 207). Fish consented in 1905 to the wiping off of Harrison's withdrawals of over $4,000 (p. 6). If Fish had not been fully aware of this practice which had obtained for so long a time, would he have consented to such a resolution? Why should Fish have given Harrison all this money? This fact also strongly corroborates the testimony of Harrison and his wife, that the whole matter was explained to Fish and that Fish agreed to a continuation of the practice of permitting reasonable withdrawals which had continued from the incorporation of the company in 1899.

The Court's attention should also be called to the omnibus resolution passed by the board of directors at a regular meeting on July 19, 1910, at which all of the directors were present (p. 592 and Exhibit (X) mentioned therein which is set out on page 591 as a part of Exhibit C. 1. This resolution found that the payments to A. G. Harrison on his drawing account were payments for services rendered, and approved the credits which appeared on said account. The action taken was valid; and under this resolution, as well as under the previous resolutions, the entries in the books of account, the agreement of the stockholders, and the practice continued for years, this Court should approve the payments made to Harrison.

(*b*) *Fish was familiar with the books and affairs of the corporation, and had full knowledge of entries in minute book.*

The next question to be considered is that of Fish's attendance at the meetings of the board of directors. Harrison and his wife, both testify to Fish's presence at all of the meetings of the Board set forth in the minutes of the corporation after 1903, and other meetings (pp. 103, 108, 113, 114, 123, 124, 126, 206, 208, 210, 214). Tichenor refers to the meeting of 1908, (pp. 167, 172), and to three or four other meetings (p. 185). Fish also handed the minute book to Tichenor, requesting him to write therein a minute (p. 173). The only meeting to which Fish takes exception is the one of September 8, 1908, at which time, he says he was in Summit, New York. In reply to a question from the Court, Fish admits that he was present at both meetings where the salary increases were made. (p. 27). Fish also admits that he attended "several" meetings (p. 16).

> "I guess we would go sometimes two years; the dates of the minutes will tell you how often we went."

It is apparent from the testimony that little regard was paid by either Fish or Harrison, to the dates of the meetings or the formalities of the minutes. Frequently no entry was made or corporate action which was usually of a very informal kind. Both admit the "antedating" of resolutions. (See Fish's testimony p. 21 *et seq.* and minutes p. 583).

> Q So that on the 30th of September (1909), you did, in your own handwriting, write the minute that there appears on page 30, didn't you?
>
> A Yes, sir, that is my own handwriting; that minute was entered there a long while

after September 30th; it was dated September 30th, *but the minute was not entered in that book until a long while after that.*

Q How long after that?

A In April sometime.

Q 1910?

A Yes, sir.

Q *Did you yourself, antedate the resolution?* .

A *Yes, sir.*

Harrison says, that September 8, 1908, was not the correct date of the meeting, and that it was held some time thereafter. Fish admits that after his return from Summit, New York, an evening was spent at the Harrison residence, and that this meeting occurred in October or November (p. 47).

Q You say you were at Summit, New York, spending a holiday?

A Yes, sir.

Q Do you recall the fact that it was after your return from Summit, New York, that you and your wife went out and spent the evening at Mr. Harrison's residence, to which you referred earlier in the day?

A I think that is the meeting that you had reference to, that I was there along in October or November.

We respectfully urge that the evidence clearly shows that Fish was familiar with the affairs of the company, and attended all the meetings, voting on all the resolutions in the minute book, as they were presented. At times he pretends to show entire ignorance of the minutes, but it is significant that on page 30 of the minute book is found in Fish's own handwriting the following entry: (p. 21 and minute p. 583). This entry has been termed a minute, although there was no corporate action to support it. Nevertheless,

both Harrison and Fish for some time drew the salary of $3,000.00 referred to in the minute.

> Montclair, N. J., September 30, 1909.
>
> At a meeting of the Board of Directors, the following business was transacted: the salary of the President and Treasurer to be Three thousand each for the ensuing year, commencing October first. Meeting held at the main office, No. 25 Grove street.
>
> A. Gould Harrison,
> F. K. Fish.

Fish's plea of ignorance of the books of the corporation, of the minute which appears on the same page, and other minutes, is absurd, particularly when taken in connection with the voluminous testimony of the defendants, Tichenor, the bookkeeper, Frankland and Miss Curtin, all of whom testified to a large number of specific times when Fish examined not only the minute book, but the other books of the corporation (pp. 167, 168, 196, 213, 224, 325). There is also much testimony to show conferences with defendant Harrison and some of the employees concerning the corporate books and affairs. (pp. 204, 205).

But even on the unsupported theory of complainant's ignorance, it must be conceded that the duty and opportunity of ascertainment existed; and his laches in this respect is fatal and debars him from relief.

Crawford v. *Lees* XIV. Buch., p. 324 and p. 340.

(*c*) *Complainant consented to Harrison's withdrawals and is estopped to deny the validity of the entries in the corporate books of the corporation.*

The acquiesence of the complainant clearly appears. Fish certainly knew what was going on; and, granted his story be true, he had sufficient information to put him on inquiry. He is deemed conversant with existing facts, if he had information which would lead him to such facts. He could not stand by and for years permit Harrison to continue a method of drawing compensation of about $2,800 a year, partly through the salary account, and partly through a drawing account, and now complain that because of technical irregularities in method, the moneys so received by Harrison, with Fish's knowledge and acquiescence, were loans and should be repaid. Fish knew that Harrison was entitled to, and was receiving more than $20 a week; he knew his style of living and admittedly made no objection until his "demand" for equal representation in the Board of Directors was refused by Harrison (p. 220 *et seq.*)

> "It is a familiar principle of equity jurisprudence that long continued acquiescence in a course of conduct by one interested in it, especially when the rights of others are affected thereby, will induce the Court to refuse him relief upon his subsequent complaint of it."

Dunphy v. *Assoc.,* 146 Mass. 495 and cases cited on page 500.

In *Brown* v. *De. Young,* 167, Ill. 549 (47 N. E. 863) D was secretary and treasurer of a corporation at a salary largely in excess of the sum to which such officer was entitled, under the rules of the corporation without the knowledge

of the other stockholders, except H. D. informed H. of the amount of salary being taken by him from time to time. Held that H. was entitled to no relief as against D.

> "The Court is of the opinion that the knowledge of Houston for the space of two years and upward of the amount of salary received by Morden and DeYoung, and his tacit consent thereto and the conduct shown by his own evidence and letters in the record effectually debar him from any relief in this case as to the salaries of Morden & DeYoung. He who seeks equity should come with clean hands." (Cases cited.)

It is insisted that Harrison's withdrawals were payments of a reasonable salary, and that there was no wrongful diversion of the corporate funds. In fact, the major part of the credit entries on the drawing account found in the journal and ledger, refer specifically to their being for salary. But even in a case of misappropriation, a shareholder must use diligence in the assertion of his rights to entitle him to relief. *High on Injunction*, Vol. II. (4 ed.) §1206. The law is too well settled to require the citation of cases in support of the proposition that where *laches* is in issue, the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts known to him were sufficient to put upon a man of ordinary intelligence, the duty of inquiry.

Cook on Corporations, Vol. III. (7 ed.) §730, page 1848, states the rule of ratification as follows:

> "There are in general two ways in which a stockholder may be said to have ratified an act of the directors which he is attempting to enjoin or set aside. The ratification may be by an express agreement or statement to that effect, or it may be such laches or acquies-

cense as will amount to an implified ratification."

Clark and Marshall on Corporations, Sec. 553 B, page 1705, states the rule to be, in effect, that a stockholder who participates in illegal or *ultra vires* transactions in a corporation is estopped to set the transactions aside. The same is true where a stockholder expressly or by his conduct subsequently ratifies the transactions.

It is respectfully submitted that the evidence in this case shows participation by Fish to the extent of $1,200, a year salary for himself in a method, similar to that of Harrison, up to the time the salary stopped. The method employed by both of these men have been "technically inaccurate," but it was neither illegal nor *ultra vires*, and did not affect the solvency of the corporation. The positive agreement on Fish's part to the methods set out in the minute book and the books of account also appears. Fish assented in 1905 to the crossing off of over $4,000 without objection. We also have positive proof of his acquiescence and assent to all of the other transactions in question. Fraud is the basis of the bill and must be proved. The burden of proof is upon Fish. He has not met this burden. The evidence is overwhelmingly in favor of the defendants and warrants the findings of the court below. *McMahon* v. *Co.,* XV Buch. 545 and p. 550. *Phila. etc. Co.* v. *Schmidt* (Pa.) 98 At. R. 964 at p. 966.

The agreement of the parties to balance the debit entries of the drawing account by appropriate credit entries clearly appears. This was carried out on the books of account by the various bookkeepers of the corporation. Entries in the minute book of such credits were not essential. Even though it be urged that the

minute entries of credits are informal and incomplete, we insist that the testimony and exhibits show that minutes were passed, and their recordation is not essential to their validity.

2 Thompson Cor. pp. 1842-1847.

Clark Cor. p. 479.

Robson v. *Co.* LIV. Vr. 453 at p. 456 (cases cited.)

Elliott Priv. Cor. (4 ed.) §470.

The board of directors of the Harrison Company, constituted *all* of the stockholders of the company, and the acts of the directors, in wiping off overdrafts and authorizing the salary credits in the minute book and the account books, were the acts of the stockholders as well. The case of *Watts v. Gordon et al* (Tenn. February 8, 1913) 153 S. W. 483, is a case strikingly in point, although the facts are not as strong as those in the case at bar. The bill in the Watts case was brought to recover moneys alleged to have been withdrawn from the treasury of the corporation by Gordon, its president, and applied to his own use and also to pay premiums upon certain policies belonging to Gordon's wife and mother. The Gordon Co. was chartered in 1906. There were five corporators, two of whom, Nathan Cohn and Leo Martin "were merely formal, having only nominal stock." The real owners of the business were Gordon, J. W. Martin, and S. Cline. Up to January 1, 1908, the salary of Gordon and Martin each was $2,500. By consent of the three owners, on January 1, 1908, the salary of Gordon and Martin was increased to $3,500 each. But it did not appear that there was ever any formal meeting of the board of directors held, or that any minutes were kept. The three owners simply

agreed upon the increase of salary, and Gordon and Martin were allowed to draw acordingly.

It appears also that the method which these parties used in drawing their salaries was that, whatever bills either owed, a check of the corporation was used directly to his debtor. And it also appears that at the time these checks were drawn the corporation was solvent.

There is no evidence that any fraud was intended, either by Gordon or the Insurance Company, or by the beneficiaries under the policies, nor does it appear that the increased salary was exhorbitant.

The complainant based his case on the theory that, the increased salaries and overdrafts were misappropriations. The court held that the unanimous act of the three directors who constituted a majority of the Board, binding upon the corporation, whether preserved in the minutes or not.

The Court also held "that the three men who had agreed to the increase of salaries, owned all of the stock of the corporation, and it was therefore the action of the stockholders, as well as the directors."

It was also insisted that the solvency of the corporation was immaterial. The court, however, refused to hold Gordon responsible for the payments to him "even though there may have been some technical inaccuracy in the method of appropriation at the time."

The complainant endeavored to supply the theory of a resulting trust, but the court holds that such a theory could not apply where the parties, whose moneys were used, agree to that use. *"This brings us back to the view previously announced in this opinion, that where all of the real stockholders and a majority of the direc-*

tors agree to a particular appropriation of the funds of the corporation, and that appropriation leaves the corporation still solvent, no one can complain.''

In the case under discussion, it was shown that it was customary to draw checks to the order of the debtor of an employe. The court held that there was nothing "legally wrong in such a custom."

Appellant's counsel lays great stress in his brief upon the proposition that complainant did not assent to the periodic wiping off of the debits on the Harrison drawing account. As we have shown, and as the Court below found, the proof is clear that Fish knew and approved of the method of paying Harrison his compensation and the times and amounts of such payments. This would be sufficient of itself to estop Fish from complaining about the alleged overdrafts at this late day, but he not only consented to the crossing of the overdrafts by his specific agreement with Harrison and his approval of the Harrison drawing account, but he also voted for specific corporate resolutions which, though informal in character, nevertheless are sufficient to validate Harrison's drawings. Harrison's participation in the act of the board of directors in this matter was therefore not necessary; and the conclusion of appellant's counsel that Harrison gave himself corporate funds is unwarranted.

We cannot question the soundness of the general legal principles referred to under Point III, appellant's brief, but we do urge that they are not applicable. In *Gardner* v. *Butler,* 3 Stew. 702, the Court of Errors affirms the decree of the Court of Chancery which refused to order an accounting on the question of the salary of a president of a corporation.

As the opinion of the Chancellor in the Gardner-Butler case shows (p. 709) the suit was brought by stockholders of a company to compel an accounting by a director of the moneys received by him for valuable services outside of his duties as director and it appeared that the moneys received were less than the usual rates for such services. We respectfully insist that a similar situation exists in the case at bar and the payments made to Harrison by the corporation can only be voided on terms that Harrison be allowed reasonable compensation for the services rendered by him. No question has been raised in the case that Harrison was overpaid; and, as previously urged, complainant Fish knew what compensation Harrison was receiving and the manner in which he received such compensation.

> "The cupidity and avarice of the trustee is guarded against by giving the *cestui que trust* the right to repudiate the contract at all times, where it is executory, and to allow simply a just remuneration, without reference to the contract price, where it is executed. The trustee thus derives no advantage from his breach of duty, and the company can suffer no detriment from his service in their behalf. * * * The contract will not be regarded, but the services having been rendered, and the company having received the benefit of them, it would be manifestly inequitable to deny to the trustee a fair equivalent for them. It would pervert a rule of law which is intended to guard against fraud and injustice." *Gardner* v. *Butler,* 3 Stew. 702 at p. 724.

Appellant coming into equity to avoid payment of moneys to Harrison for services rendered and in attempting to show that the payments for such services were in excess of their value must show more than the mere fact that the payments were made to a director. If the

payments appear to be fair and just and, whether under a contract or not, to have been advantageous to the corporation, why should such payments be set aside? Where it clearly appears that the compensation is reasonable and proper no relief should be granted.

While the rule is laid down in *Steel Corp.* v. *Hodge,* 19 Dick. 807, that directors cannot lawfully enter into a contract in the benefit of which even one of their number participates without the knowledge and consent of the stockholders, we positively insist that this rule does not apply in the case at bar, because Fish had knowledge of Harrison's relations with the corporation and consented to everything that was done. The Court in the Hodge case (p. 814) after citing a large number of cases, holds:

> "But in the cases cited the contract was made by the trustees without the knowledge or consent of the *cestui que trust* and without subsequent ratification or adoption by which the vice in it could be cured."

The other cases cited by appellant's counsel in his brief, upon analysis merely support the general rule that the contract with a director is voidable when the stockholders have not consented to such contract or ratified it. In *Schaffhauser* v. *Co.,* 218 Pa. p. 298, the one point decided is

> "It (the contract) is voidable when a minority of the Board of Directors or the stockholders choose to have it set aside in a proper legal proceeding."

This was a small business corporation, informally conducted in many respects, but the fullest disclosure was made of the corporate affairs to Fish. While every effort was made to show bad faith and dishonesty on the part of the defendant Harrison, this effort

failed lamentably. As the testimony and the books conclusively show, Fish knew, approved and ratified everything that was done by Harrison and the bookkeepers. As we have shown, and as the Court below found, Fish consented to the crossing off of the overdrafts and is estopped. He has miserably failed to support either of the two contentions in his bill, and the decree of the Court of Chancery should be affirmed.

Respectfully submitted,

CHURCH, HARRISON & ROCHE,
Solicitors for Respondents.

ROBERT H. MCCARTER,
J. H. HARRISON,
of Counsel.

Order of Reference.

Filed July 31, 1914.

In Chancery of New Jersey.

Between

FREDERICK K. FISH,
Complainant,

and

A. GOULD HARRISON and others,
Defendants.

Order of Reference.

The hearing in the above entitled cause having been brought on by Edward Maxson, solicitor of the complainant, in the presence of Munn & Church, Esquires, solicitors for the defendant, and J. Henry Harrison and Robert H. McCarter, Esquires, of counsel with the defendant, and the pleadings and proof being read and upon taking the testimony of the respective parties in open court, and hearing the argument of the respective counsel, and the Court having considered the matter and being of the opinion that the complainant is entitled to an accounting as prayed for in the bill of complaint and upon proof of due notice of this application to settle the interlocutory decree, it is THEREUPON, on this 29th day of July, 1914,

ORDERED that this matter be referred to Harry N. Reeves, Esquire, one of the Special Masters of this court to take and state an account from November eighteenth, Nineteen hundred and five

between A. Gould Harrison and the Harrison Milling Company, and that the said Master do ascertain and report how much of the funds if any, belonging to the company, the said A. Gould Harrison, has appropriated to his own use or purpose either in his capacity as a treasurer or otherwise, and that the said Master ascertain and state the amount due from the said A. Gould Harrison to the said company because of any improper, illegal or irregular disposition made by him of the funds or property of the said company and that the said Master do take testimony for the court as to whether or not fifteen (15) shares of the capital stock of the said Harrison Milling Co. purchased by A. Gould Harrison with the check of the defendant, The Harrison Milling Co., was bought with the funds and paid for out of the treasury of the said, The Harrison Milling Company, and for the purpose of making the report and taking the testimony hereinabove directed to be made and taken, the said Master do examine any or all books or accounts of the said, The Harrison Milling Company and it is further

ORDERED that the testimony heretofore taken in open court be considered by the said Master in making his report and it is further

ORDERED that the said Master do make his formal report on or before the 1st day of October, 1914.

E. R. WALKER,
C.

Respectfully advised,

VIVIAN M. LEWIS,
V. C.

Master's Report.

IN CHANCERY OF NEW JERSEY.

Between

FREDERICK K. FISH,
Complainant,

and

A. GOULD HARRISON, *et al.*,
Defendants.

On Bill, &c.

Master's Report.

In pursuance of an order of this Court, made in the above cause, bearing date on the Twenty-ninth day of July, Nineteen hundred and fourteen, whereby it was ordered that it be referred to the subscriber, one of the Special Masters of this court, to take and state an account from November eighteen, Nineteen hundred and five, between A. Gould Harrison and The Harrison Milling Company, and that the said Master ascertain and report how much of the funds, if any, belonging to the company, the said A. Gould Harrison, has appropriated to his own use or purpose, either in his capacity as treasurer or otherwise; and that the said Master ascertain and state the amount due from the said A. Gould Harrison to the said company, because of any improper, illegal or irregular disposition made by him of the funds or property of the said company; and that the said Master do take testimony for the Court as to whether or not fifteen shares of the capital stock of the said Harrison Milling Company, purchased by A. Gould Harrison, with the check of the defendant, the Harrison Milling Company was bought

with the funds and paid for out of the treasury of the said Harrison Milling Company, and for the purpose of making the report and taking testimony directed to be made and taken, that the said Master examine any or all books or accounts of The Harrison Milling Company, and that said Master consider in making his report the testimony heretofore taken in open court, and that he make his report on or before the First day of October, Nineteen hundred and fourteen, I, Harry N. Reeves, one of the Special Masters of this court, do hereby report to his Honor, the Chancellor, that I have been attended by the solicitor of the complainant and by the solicitor of the defendants, and that in their presence I have examined the matters referred to me by the said order and submit herewith the testimony taken for the Court as to whether or not fifteen shares of the capital stock of the said Harrison Milling Company, purchased by A. Gould Harrison with the check of the defendant, The Harrison Milling Company was bought with the funds and paid for out of the treasury of the said Harrison Milling Company; upon which question I am not directed to make any finding.

And I do further certify and report that I have taken and stated an account from November eighteen, Nineteen hundred and five, between A. Gould Harrison and The Harrison Milling Company, and that the schedules hereunto annexed contain said account. In arriving at the figures therein set forth, I have taken as valid, the resolution in the minute book of The Harrison Milling Company, dated November eighteen, Nineteen hundred and five, which in my opinion charged off the net drawings of said

A. Gould Harrison in the sum of four thousand, five hundred and fifty-two dollars and sixty-three cents up to and including November thirty, Nineteen hundred and five. (See "Ledger 1903 H. M. Co." at page 68.) The account, therefore, starts on December first, Nineteen hundred and five, and as to its debits is a summary of the drawings shown on the account in the ledgers of the company, known as "A. Gould Harrison," and throughout the testimony called his "drawing" account—seven thousand, one hundred and thirteen dollars and sixty-two cents. The last item on either side of this account in the ledgers of the company dated August twenty-fourth, Nineteen hundred and eleven, when the account seems to cease. Both expert accountants agree on this figure—seven thousand, one hundred and thirteen dollars and sixty-two cents —as the total of the drawings shown by the "A. Gould Harrison" account from December first, Nineteen hundred and five, to August twenty-fourth, Nineteen hundred and eleven, inclusive. The accountant of the complainant, however, seeks to add to this figure a total of four hundred and fifty dollars and seventy-one cents, the drawing shown by the account from November twenty-first, Nineteen hundred and five, to November twenty-ninth, Nineteen hundred and five inclusive. But I am satisfied that it was the intention of the resolution, although it bears date November eighteenth, Nineteen hundred and five, to include the drawing to November thirtieth, Nineteen hundred and five, for the figures four thousand, five hundred and fifty-two dollars and sixty-three cents are plainly set forth in the resolution and the ledger account showing a debit of that exact amount on November twenty-

ninth, Nineteen hundred and five, is balanced by a credit entry of that amount pursuant to the resolution.

In order to ascertain and report how much of the funds, if any, belonging to the company the said A. Gould Harrison has appropriated to his own use or purpose, either in his capacity as treasurer or otherwise, I have added to the total of said drawing account of A. Gould Harrison, the salary which said A. Gould Harrison actually drew as shown by the books, from November eighteenth, Nineteen hundred and five to September thirtieth, Nineteen hundred and nine, after which latter date he was entitled to a salary of three thousand dollars per year. From this grand total, I have deducted as a matter of credit against said total debits, all of the credits shown in the said ledger account of A. Gould Harrison, together with all salary which he actually drew from week to week, during the period from November eighteenth, Nineteen hundred and five, to September thirtieth, Nineteen hundred and nine. In giving these credits shown in said ledger account to the defendant, A. Gould Harrison, I have found that all of the resolutions in the minute book of the Harrison Milling Company, charging off the overdrafts of said A. Gould Harrison and authorizing additional salary from time to time, are valid and that their intent and purpose are carried out in the account books of the company at hand and under examination by me. I, therefore, ascertain and state that the amount due from the said A. Gould Harrison to the said company, because of any improper, illegal or irregular disposition made by him of the funds or property of the said company is the sum of eight hundred and

sixty-eight dollars and fifty-eight cents, with interest from August twenty-fourth, Nineteen hundred and eleven, since which date said sum has been due. In arriving at this figure I have not given A. Gould Harrison any credits for salary which he did not draw at the rate of three thousand dollars per year, commencing October first, Nineteen hundred and nine, as apparently authorized by resolution appearing on the minute book of the company under date of September thirtieth, Nineteen hundred and nine, for the ledger account "A. Gould Harrison" shows no such intention to credit him. It may be that he neglected to draw his full annual salary after October first, Nineteen hundred and nine, but he cannot recover it in this action, in the absence in said ledger account, of any expressed intention on the part of the company to credit his debit balance with such credits as may be due him on account of said salary.

All of which as directed by orders extending time for the filing of this report and by consent of counsel, I do respectively report this tenth day of May, Nineteen hundred and fifteen.

Harry A. Reeves

Special Master in Chancery of New Jersey.

SCHEDULES.

Drawings of A. Gould Harrison as shown in ledgers of Harrison Milling Company under account "A. Gould Harrison":	
In "Ledger 1903, H. M. Co.," from February 6, 1906, to May 26, 1906, inclusive	$ 33.30
In "Ledger 1906, H. M. Co.," from June 14, 1906, to July 15, 1907, inclusive	1,593.79
In "Ledger 1906, H. M. Co.," from August 10, 1907, to February 3, 1908, inclusive	1,504.26
On "Sheet No. 1" of loose leaf ledger of "The Harrison Milling Company" from March 7, 1908, to July 30, 1908, inclusive.....	1,056.94
On "Sheet No. 1" and the reverse side thereof from August 14, 1908, to July 31, 1909, inclusive.....	2,050.00
On reverse side of "Sheet No. 1" from August 3, 1909, to August 23, 1911, inclusive	875.33
Total drawings shown by said account..	$7,113.62
Salary of A. Gould Harrison at $20 per week for 200 weeks from November 18, 1905, to September 30, 1909, actually drawn by him from week to week and included in "Salary Account" on ledgers of the Harrison Milling Company.....	4,000.00
	$11,113.62

Credits to which A. Gould Harrison is entitled as shown by minute-book of the Harrison Milling Company and the journal, cash-book and ledger entries under account "A. Gould Harrison."

July 31, 1906—Extra salary from December 1, 1905, to August 1, 1906 (Journal, page 761; Ledger, page 58) 680.00

(Authorized by minute of November 18, 1905—"that the salary of said A. Gould Harrison be at the rate of $40 per week from Dec. 1/05, to Aug. 1/06"); August 1, 1907—Extra salary 1906-7 (Journal, page 524, Ledger, page 58)..... 1,040.00

(Authorized by minute of September 2, 1907—A. G. Harrison elected "Treas. & Mgr. with same authority as before"); September 25, 1907, "Loss and Gain" (Journal, page 561, Ledger, page 58)..... 386.74

(Authorized by minute of September 2, 1907—"that the overdraft of A. Gould Harrison's amounting to 386.74 be charged off giving his a/c credit for same.") November 30, 1907, W. H. D. Horton (Runabout), Journal, page 653; Ledger, page 58.. 65.00

July 30, 1908, Extra Salary (Journal, page 245; Ledger sheet, No. 1).. 2,016.55

(Authorized by minute of September 8, 1908, "that the overdraft of A. Gould Harrison amounting to be charged off to Salary a/c" and minutes of July 19, 1910, approving ledger account), February 1, 1909, Cash for Pony (Cash-book, page 246; Ledger, sheet No. 1)..... 50.00

July 31, 1909, Extra Salary (Journal, page 75; Ledger, sheet No. 1, reverse side)	2,000.00
(Approved, together with all of above credits, by minutes of July 19, 1910.) November 19, 1910, Cash Book, page 90; Ledger, sheet No. 1, reverse side).....	1.90
August 14, 1911, Cash Book, page 214; Ledger, sheet No. 1, reverse side)	3.25
August 18, 1911, Cash Book, page 216; Ledger, sheet No. 1, reverse side)	1.00
August 24, 1911, Cash Book, page 218; Ledger, sheet No. 1, reverse side)	.60
	$ 6,245.04
Add 200 weeks of salary actually drawn from week to week at $20 per week.....	4,000.00
	$10,245.04
Total drawings $11,113.62	
Total credits 10,245.04	
Amount due from A. Gould Harrison to Harrison Milling Company on August 24, 1911.....$ 868.58	

Exceptions to Master's Report.

June 2, 1915.

IN CHANCERY OF NEW JERSEY.

Between FREDERICK K. FISH, *Complainant,* *and* A. GOULD HARRISON, *et al.*, *Defendants.*	*Exceptions to Master's Report.*

Exceptions taken by the complainant in this cause to the report made therein on the 10th day of May, 1915, by Harry N. Reeves, Esq., one of the Masters of this Court, who was directed by an order of this Court, bearing date on the 29th day of July, 1914, to take and state an account between A. Gould Harrison, one of the defendants herein, and the Harrison Milling Company.

FIRST EXCEPTION.

For that the said Master has reported as follows:

> "I have taken as valid, the resolution in the minute book of The Harrison Milling Company, dated November eighteen, Nineteen hundred and five, which in my opinion charged off the net drawings of said A. Gould Harrison in the sum of four thousand, five hundred and fifty-two dollars and sixty-three cents up to and including November thirty, Nineteen hundred and five. (See "Ledger 1903 H. M. Co." at page

68.) The account, therefore, starts on December first, Nineteen hundred and five, and as to its debits is a summary of the drawings shown on the account in the ledgers of the company, known as "A. Gould Harrison," and throughout the testimony called his "drawing" account—seven thousand, one hundred and thirteen dollars and sixty-two cents. The last item on either side of this account in the ledgers of the company is dated August twenty-fourth, Nineteen hundred and eleven, when the account seems to cease. Both expert accountants agree on this figure—seven thousand, one hundred and thirteen dollars and sixty-two cents—as the total of the drawings shown by the "A. Gould Harrison" account from December first, Nineteen hundred and five to August twenty-fourth, Nineteen hundred and eleven, inclusive. The accountant of the complainant, however, seeks to add to this figure a total of four hundred and fifty dollars and seventy-one cents, the drawings shown by the account from November twenty-first, Nineteen hundred and five, to November twenty-ninth, Nineteen hundred and five inclusive. But I am satisfied that it was the intention of the resolution, although it bears date November eighteenth, Nineteen hundred and five, to include the drawings to November thirtieth, Nineteen hundred and five, for the figures four thousand, five hundred and fifty-two dollars and sixty-three cents are plainly set forth in the resolution and the ledger account showing a debit of that exact amount on November twenty-ninth, Nineteen hundred and five,

is balanced by a credit entry of that amount pursuant to the resolution."

And the complainant insists that this part of said Master's report is not in accordance with the testimony in this case, and should not, therefore, be permitted to stand.

SECOND EXCEPTION.

For that whereas the Master reports as follows:

"I have added to the total of said drawing account of A. Gould Harrison, the salary which said A. Gould Harrison actually drew as shown by the books, from November eighteenth, Nineteen hundred and five, to September thirtieth, Nineteen hundred and nine, after which latter date he was entitled to a salary of three thousand dollars per year. From this grand total, I have deducted as a matter of credit against said total debits, all of the credits shown in the said ledger account of A. Gould Harrison, together with all salary which he actually drew from week to week, during the period from November eighteenth, Nineteen hundred and five, to September thirtieth, Nineteen hundred and nine. In giving these credits shown in said ledger account to the defendant, A. Gould Harrison, I have found that all of the resolutions in the minute book of the Harrison Milling Company, charging off the overdrafts of said A. Gould Harrison and authorizing additional salary from time to time, are valid and that their intent and purpose are carried out in the account books of the com-

pany at hand and under examination by me. I, therefore, ascertain and state that the amount due from the said A. Gould Harrison to the said company, because of any improper, illegal or irregular disposition made by him of the funds or property of the said company is the sum of eight hundred and sixty-eight dollars and fifty-eight cents, with interest from August twenty-fourth, nineteen hundred and eleven, since which date said sum has been due. In arriving at this figure I have not given A. Gould Harrison any credits for salary which he did not draw at the rate of three thousand dollars per year, commencing October first, Nineteen hundred and nine, as apparently authorized by resolution appearing on the minute book of the company under date of September thirtieth, Nineteen hundred and nine, for the ledger account "A. Gould Harrison" shows no such intention to credit him. It may be that he neglected to draw his full annual salary after October first, nineteen hundred and nine, but he cannot recover it in this action, in the absence in said ledger account of any expressed intention on the part of the company to credit his debit balance which such credits as may be due him on account of said salary."

And the complainant insists that this part of said Master's report is not supported by the evidence and that it is contrary to law and equity.

Exceptions to Master's Report.

Whereas, said Master has not reported properly and in accordance with the terms of said order or with the principles of equity.

In which said matters and respects this exceptant prays the judgment of this Court.

(Signed) EDWARD MAXSON,
Solicitor and of Counsel for Complainant.