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New Jersey Court of Errors and Appeals

Notice of Appeal

(Filed February 20th, 1920)

IN CHANCERY OF NEW JERSEY

Between
GEORGE M. LAMONTE, as Commissioner of Banking and Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company,
Complainant,
against
HARVEY MOTT, CHARLES C. LURICH, GEORGE E. KRUG, EDWARD D. DUNN, WILLIAM T. BENJAMIN, WILLIAM F. KEIM, HARRY W. FOSTER, EMILE C. BATAILLE, G. ROWLAND MUNROE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH,
Defendants.

On Bill of Complaint and counterclaim.
Notice of Appeal to the New Jersey Court of Errors & Appeals.

The defendants Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe hereby appeal to the New Jersey Court of Errors & Appeals in the last resort in all causes from so much of the final decree

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made in this Court in the above stated cause as declares that the said defendants while directors of Roseville Trust Company had notice that the defendant Raymond E. Smith was unworthy of trust and confidence, but nevertheless retained said Smith in his office of secretary and treasurer of said Roseville Trust Company and thereafter permitted him to have control of the funds and property of said Trust Company without sufficient check, supervision and restraint; and as declares that by reason of said alleged negligent acts on the part of said directors these defendants became and are liable to complainant for $400,000.-00, parcel of the losses aggregating $575,000.00 suffered by Roseville Trust Company, by reason of the misappropriation and misapplication of its funds and property by its secretary and treasurer, the defendant Raymond E. Smith; and as declares that these defendants while directors of said Trust Company caused or permitted said Roseville Trust Company to discount commercial paper and to make loans upon bills and notes to persons other than a county, city, town, township, borough and municipality of this State (contrary to the form of the statute in such case made and provided, that is contrary to the provisions of Section 7 of an Act of the 123d Legislature of the State of New Jersey entitled "An Act Concerning Trust Companies" Revision of 1899); and that the complainant is entitled, to the extent in said decree set forth to the relief prayed for in the bill of complaint; and as orders, adjudges and decrees that these defendants shall within ten days after service upon them, or their respective solicitors of a copy of this decree, pay to the said complainant or his successor or duly authorized

agent or deputy for and in behalf of said Roseville Trust Company the said sum of $400,000.00, together with interest upon said sum, respectively, "from the date of this decree," together with the costs as taxed and the counsel fee as "hereinafter allowed," and that in default thereof an execution issue according to the rules and practice of this Court; and as orders, adjudges and decrees that it be referred to Alonzo Church, Esq., one of the masters of this Court to ascertain and report as to each of these defendants, the losses, if any, suffered by said Roseville Trust Company upon loans unlawfully granted or permitted by these defendants, during their several terms of office, in conformity with the opinion heretofore filed herein, and that the said Master do make his report with convenient speed, and that the complainant be, and he "hereby" is permitted to apply "for a further decree, supplemental hereto," in accordance with such report; and as orders, adjudges and decrees that the complainant be and is allowed and granted a counsel fee of $5000.00 in said decree set forth.

February 20th, 1920

OTTO A. STIEFEL,
Solicitor of defendants Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe.

OTTO A. STIEFEL,
Of Counsel with defendants Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe.

I conceive there is good cause for appeal in the above stated cause.

OTTO A. STIEFEL,
Of Counsel with defendant Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe.

Petition of Appeal

(Filed March 10th, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between

GEORGE M. LAMONTE, as Commissioner of Banking & Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company,

Complainant-Respondent,

and

HARVEY MOTT, CHARLES C. LURICH, WILLIAM T. BENJAMIN, WILLIAM F. KEIM and G. ROWLAND MUNROE,

Defendants-Appellants,

GEORGE E. KRUG, EDWARD D. DUNN, HARRY W. FOSTER, EMILE C. BATAILLE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH,

Defendants-Respondents.

On appeal from the Court of Chancery.

To the Honorable, the Court of Errors & Appeals in the last resort in all causes:

The petition of Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe, the appellants in the above stated cause, respectfully shows, that your peti-

tioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 31st day of December, in the year 1919, and filed in said Court on February 19th, in the year 1920, wherein the said George M. LaMonte, as commissioner as above stated, was complainant, and the said Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe were defendants, and in which also George E. Krug, Edward D. Dunn, Harry W. Foster, Emile C. Bataille, John B. Scarlett, Worthington H. Ingersoll and Raymond E. Smith also were defendants; and your petitioners find themselves aggrieved in this respect, to wit:

That said decree declares that the said petitioners while directors of Roseville Trust Company had notice that the defendant Raymond E. Smith was unworthy of trust and confidence, but nevertheless retained said Smith in his office of secretary and treasurer of said Roseville Trust Company and thereafter permitted him to have control of the funds and property of said Trust Company without sufficient check, supervision and restraint; and also declares that by reason of said alleged negligent acts on the part of said directors these petitioners became and are liable to complainant for $400,000.00, parcel of the losses aggregating $575,000.00 suffered by Roseville Trust Company, by reason of the misappropriation and misapplication of its funds and property by its secretary and treasurer, the defendant Raymond E. Smith; and also declares that these petitioners while directors of said Trust Company caused or

permitted said Roseville Trust Company to discount commercial paper and to make loans upon bills and notes to persons other than a county, city, town, township, borough and municipality of this State (contrary to the form of the statute in such case made and provided, that is contrary to the provisions of Section 7 of an Act of the 123d Legislature of the State of New Jersey entitled "An Act Concerning Trust Companies" Revision of 1899); and that the complainant is entitled, to the extent in said decree set forth to the relief prayed for in the bill of complaint; and that said decree also orders, adjudges and decrees that these petitioners shall within ten days after service upon them, or their respective solicitors of a copy of this decree, pay to the said complainant or his successor or duly authorized agent or deputy for and in behalf of said Roseville Trust Company the said sum of $400,000.00, together with interest upon said sum, respectively, "from the date of this decree," together with the costs as taxed and the counsel fee as "hereinafter allowed," and that in default thereof an execution issue according to the rules and practice of this Court; and also orders, adjudges and decrees that it be referred to Alonzo Church, Esq., one of the masters of this Court to ascertain and report as to each of these petitioners, the losses, if any, suffered by said Roseville Trust Company upon loans unlawfully granted or permitted by these petitioners, during their several terms of office, in conformity with the opinion heretofore filed herein, and that the said Master do make his report with convenient speed, and that the complainant be, and he "hereby" is permitted to apply for "a further decree,

supplemental hereto," in accordance with such report; and also orders, adjudges and decrees that the complainant be and is allowed and granted a counsel fee of $5000.00 in said decree set forth.

And your petitioners humbly appeal from those parts of the decree of the Chancellor which decree as aforesaid upon the ground that the same is erroneous, for that the Chancellor should have adjudged that the complainant was not entitled to any relief as against your petitioners, namely, the defendants Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and G. Rowland Munroe, or any of them and should have decreed that the complainant's bill be dismissed as to your petitioners, with costs to your petitioners.

Your petitioners have not joined the aforesaid defendants Edward D. Dunn, Harry W. Foster, Emile C. Bataille, John B. Scarlett, Worthington H. Ingersoll and Raymond E. Smith as appellants with your petitioners for the following reasons:

1. As to the defendants Raymond E. Smith and Worthington H. Ingersoll, it appears in the aforesaid decree that they did not appear or answer complainant's bill of complaint below, the proofs against them were taken *ex parte,* and the provisions of the decree complained of by these petitioners may be set aside as to your petitioners without affecting the liability of those two defendants to complainant under said decree.

2. As to the defendant Edward D. Dunn he has already filed in this Court his petition of appeal from the decree aforesaid as far as it relates to him and has expressly requested that he shall not be made an appellant in this petition.

3. As to the other defendants George E. Krug, Harry W. Foster, Emile C. Bataille, John B. Scarlett, they have refused to join these appellants in this appeal.

Your petitioner therefore prays that the complainant aforesaid and the defendants aforesaid who have not joined in this appeal as well as the defendants Raymond E. Smith and Worthington H. Ingersoll may answer this petition of appeal; and that the said decree of the Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden.

And that your petitioners may have such relief in the premises as to this honorable Court shall seem meet.

OTTO A. STIEFEL,
Solicitor for and of counsel with
Harvey Mott, Charles C. Lurich,
William T. Benjamin, G. Rowland
Munroe and William F. Keim.

Answer to Petition of Appeal

(Filed April 1st, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between GEORGE M. LAMONTE, as Commissioner of Banking & Insurance of the State of New Jersey, in behalf of and in the name of ROSEVILLE TRUST COMPANY, Complainant-Respondent, and HARVEY MOTT, CHARLES C. LURICH, WILLIAM T. BENJAMIN, WILLIAM F. KEIM and G. ROWLAND MUNROE, Defendants-Appellants, GEORGE E. KRUG, EDWARD D. DUNN, HARRY W. FOSTER, EMILE C. BATAILLE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH, Defendants-Respondents.	On Appeal from Chancery.

The answer of the above-named complainant-respondent to the petition of appeal of Harvey Mott, Charles C. Lurich, William T. Benjamin, William F. Keim and C. Rowland Munroe, appellants above-named:

Answer to Petition of Appeal

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that a final decree was made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 31st day of December in the year, one thousand nine hundred and nineteen, and filed in said Court on February 19th in the year, one thousand nine hundred and twenty, for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that in the respects in which the said appellants state in their petition that they are aggrieved, said final decree is agreeable to equity, and prays that the same may, in said respects, be affirmed with costs to be adjudged to this respondent.

ROGER HINDS,
Solicitor of and of counsel
with Complainant-Respondent.

Notice of Appeal of Edward D. Dunn

(*Filed February 20, 1920*)

IN CHANCERY OF NEW JERSEY

Between GEORGE M. LAMONTE, as Commissioner of Banking & Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company, Complainant, and HARVEY MOTT, CHARLES C. LURICH, GEORGE E. KRUG, EDWARD D. DUNN, WILLIAM T. BENJAMIN, WILLIAM F. KEIM, HARRY W. FOSTER, EMILE C. BATAILLE, G. ROWLAND MUNROE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH, Defendants.	On Bill etc.

The defendant EDWARD D. DUNN hereby appeals from so much of the final decree made in this Court in the above stated cause on December 31, 1919, as adjudges that said defendant, while Director of the Roseville Trust Company, caused or permitted said Roseville Trust Company to discount commercial paper and to make loans on bills

and notes contrary to the form of the statute in such case made and provided; from so much of said decree as refers it to one of the masters of this Court to ascertain and report the losses, if any, suffered by said Roseville Trust Company thereby; and from so much of said decree as allows a counsel fee and costs to the complainant—to the Court of Errors and Appeals in the last resort in all causes.

COLLINS & CORBIN
Solicitors for and of counsel with
defendant Edward D. Dunn

I conceive there is good cause for appeal in the above stated cause.

DAVID A. NEWTON,
Of counsel with said defendant.

Petition of Appeal

(Filed March 10th, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between GEORGE LAMONTE, as Commissioner of Banking & Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company, Complainant-Respondent, and HARVEY MOTT, CHARLES C. LURICH and GEORGE E. KRUG, Defendants-Respondents. EDWARD D. DUNN, Defendant-Appellant, WILLIAM T. BENJAMIN, WILLIAM F. KEIM, HARRY W. FOSTER, EMILE C. BATAILLE, G. ROWLAND MUNROE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH, Defendants-Respondents.	On Appeal from Chancery.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of EDWARD D. DUNN, 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 Hon-

or, Edwin Robert Walker, Chancellor of New Jersey, bearing date December 31, 1919 and filed February 19, 1920, wherein the said George M. LaMonte, as Commissioner as aforesaid, was complainant, and the said Harvey Mott and others were defendants, in this respect, to wit:

1. The said decree adjudges that the said Edward D. Dunn, while director of the Roseville Trust Company, caused or permitted said Roseville Trust Company to discount commercial paper and to make loans on bills and notes to persons other than a county, city, town, township, borough and municipality of this state (contrary to the form of the statute in such case made and provided, that is, contrary to the provisions of section 7 of an Act of the 123d Legislature of the State of New Jersey entitled "An Act concerning Trust Companies (Revision of 1899)."

2. The said decree orders, adjudges and decrees that it be referred to Alonzo Church, Esq., one of the Masters of this Court, to ascertain and report as to each of the defendants in said cause, including defendant the said Edward D. Dunn, the losses, if any, suffered by said Roseville Trust Company upon loans unlawfully granted or permitted by said defendants, respectively, during their several terms of office, in conformity with the opinion heretofore filed in said cause.

3. The said decree orders, adjudges and decrees that the complainant in said cause be allowed and granted a counsel fee of $5,000 to be paid by the defendants, as aforesaid.

And your petitioner humbly appeals from that

part of the said decree which decrees as aforesaid, upon the ground that the same is erroneous, for that the Chancellor should have adjudged that the complaint was not entitled to any relief as against said defendant Edward D. Dunn and should have decreed that the complainant's bill be dismissed as to the said defendant Edward D. Dunn with costs.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court shall seem meet.

COLLINS & CORBIN,
Solicitors for and of counsel
with defendant Edward D. Dunn.

Answer to Petition of Appeal

(Filed April 1st, 1920)

NEW JERSEY COURT OF ERRORS AND APPEALS

Between GEORGE LAMONTE, as Commissioner of Banking & Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company, Complainant-Respondent, and HARVEY MOTT, CHARLES C. LURICH and GEORGE E. KRUG, Defendants-Respondents. EDWARD D. DUNN, Defendant-Appellant, WILLIAM T. BENJAMIN, WILLIAM F. KEIM, HARRY W. FOSTER, EMILE C. BATAILLE, G. ROWLAND MUNROE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH, Defendants-Respondents.	On Appeal from Chancery.

The answer of the above named complainant-respondent to the petition of appeal of Edward D. Dunn, appellant above-named:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nev-

ertheless says and admits that a final decree was made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the 31st day of December in the year one thousand, nine hundred and nineteen, and filed in said Court on February 19th in the year, one thousand nine hundred and twenty, for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that in the respects in which the said appellant states in his petition that he is aggrieved, said final decree is agreeable to equity, and prays that the same may, in said respects, be affirmed with costs to be adjudged to this respondent.

ROGER HINDS,
Solicitor of and of counsel
with Complainant-Respondent.

Bill of Complaint

(*Filed July 10, 1915*)

IN CHANCERY OF NEW JERSEY

To the Hon. Edwin R. Walker, Chancellor of New Jersey:

Humbly complaining, showeth, upon information and belief, unto your Honor, your orator, George M. LaMonte as Commissioner of Banking and Insurance of the State of New Jersey, in behalf of and in the name of the Roseville Trust Company, of Newark, N. J.:

First: That at all the times hereinafter mentioned the Roseville Trust Company, of Newark, N. J. was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and particularly under and by virtue of "An Act Concerning Trust Companies (Revision of 1899);" that said cor-

poration was duly incorporated on or about the 29th day of July, 1908. That annexed hereto, as Exhibit "A" hereof, hereby made part of this bill of complaint, is a copy of the certificate of incorporation of said Roseville Trust Company, which certificate was duly acknowledged according to law and thereafter submitted to the Commissioner of Banking and Insurance of the State of New Jersey, who thereupon approved the form thereof and endorsed thereupon his approval according to law, and thereafter, on the 29th day of July, 1908, said certificate was duly recorded in the office of the Clerk of the County of Essex, which was then and at all the times hereinafter mentioned the County wherein the place of business of said Roseville Trust Company in this State was to be and was established, and thereafter, on or about the 29th day of July, 1908 said certificate was duly filed according to law in the Department of Banking and Insurance. That thereupon the subscribers, whose names appear more fully in said Exhibit "A," were, and constituted from the date of said filing, a body corporate by the name of Roseville Trust Company, of Newark, N. J." That the amount of capital stock of said Roseville Trust Company, of Newark, N. J., as provided in its said certificate of incorporation, was $100,000, consisting of 1,000 shares of the par value of $100 per share; that said capital stock was fully subscribed for and paid in on or before the 30th day of November, 1908, and payment thereof duly certified to the Commissioner of Banking and Insurance on or before the 30th day of November, 1908, accord-

ing to law; that thereafter, on the 30th day of November, 1908, and within thirty days after his receipt and filing of said certificate of payment of capital stock the Commissioner of Banking and Insurance duly issued and gave to said Roseville Trust Company, of Newark, N. J., a certificate under his hand and seal that said Roseville Trust Company, of Newark, N. J. was duly and legally organized under said Act as a trust company and authorized to transact business as such in this State, and said certificate was duly published according to law. A copy thereof is hereto annexed as Exhibit "B," and hereby made part of this bill of complaint.

Second. That on the 20th day of November, 1908, the corporate organization of said Roseville Trust Company was duly completed, in that its incorporators met according to law and duly adopted its by-laws, a copy of which is hereunto annexed as Exhibit "C" and hereby made part of this bill of complaint; and thereafter and on or about the 30th day of November, 1908, it commenced to do business as authorized by law at its banking office, Number 505 Orange Street in the City of Newark and State of New Jersey; that thereafter, by proceedings duly had according to law, its by-laws were, from time to time, amended, which amendments, in substance, stating the date of each of same, are hereunto annexed as Exhibit "D" and hereby, by this reference, are made part of this bill of complaint.

Third. That said Roseville Trust Company actively engaged in the conduct of its business as a trust company from on or about said 30th day

of November, 1908, until and including the thirteenth day of August, 1913.

Fourth. That on the 13th day of August, 1913, and prior thereto, said Roseville Trust Company was conducting its business in an unsafe and unauthorized manner and was in an unsound and unsafe condition to transact its business, and it was then insolvent, and it so appeared to your orator as Commissioner of Banking and Insurance of the State of New Jersey as aforesaid, and your orator of such Commissioner from and after an examination duly had according to law then had reason so to conclude, and to conclude that it was then unsafe and inexpedient for said Roseville Trust Company to continue business, and your orator did so conclude, and on the 14th day of August, 1913, your orator, acting pursuant to the provisions of the aforesaid act entitled "An Act Concerning Trust Companies (Revision of 1899)" as amended by Chapter 171 of the Laws of 1913 entitled "An Act to Amend the Act entitled 'An Act Concerning Trust Companies (Revision of 1899),'" as Commissioner of Banking and Insurance of the State of New Jersey as aforesaid, duly took possession of the property and business of said Roseville Trust and retained such possession and is still in possession of such property and business of said Roseville Trust Company except such portions thereof as your orator has liquidated or has, according to law and pursuant to certain orders of the Court of Chancery duly sold to divers persons, and is particularly now in possession of the claims, de-

mands and causes of action set forth in this bill of complaint, and your orator now prosecutes this suit in the name of and in behalf of said Roseville Trust Company as provided by the aforesaid statute.

Fifth. That, pursuant to said by-laws, various persons, including the defendants herein, were from time to time, duly elected and re-elected Directors of said Roseville Trust Company by the stockholders thereof, at meetings of said stockholders duly convened for said purpose, and that the following is a statement showing, as to each of such Directors, his name and the dates of his election and several re-elections. That each of said Directors duly qualified as such and duly made and filed the oath required by law diligently and honestly to administer the affairs of such trust company and not knowingly to violate or permit to be violated any of the provisions of the said act; and each of said Directors entered upon the discharge of his duties as such Director promptly after the date of his election and continued to serve as such Director throughout his initial term of one year, according to the by-laws, and throughout his succeeding terms of one year each as re-elected and continuously down to the 14th day of August, 1913, except as particularly stated to the contrary in the following statement:

Bill of Complaint

Name.	Date of Election	Date of Re-election.	Date When Ceased to Act as Director.
William J. Banister,	Nov. 20, 1908	Jan. 12, 1909	Feb. 11, 1913
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Emile C. Bataille,	Nov. 20, 1908	Jan. 12, 1909	Jan. 9, 1912
		Jan. 11, 1910	
		Jan. 10, 1911	
James B. Banister,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William T. Benjamin,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
John S. Bell,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William Fairlie,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Worthington H. Ingersoll,	Nov. 20, 1908	Jan. 12, 1909	Between
		Jan. 11, 1910	May 8, 1912
		Jan. 10, 1911	and
		Jan. 9, 1912	Oct. 28, 1912
William F. Klein,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Frederick Kilgus,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
George E. Krug,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	

Name.	Date of Election	Date of Re-election.	Date When Ceased to Act as Director.
Charles C. Lurich,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Clinton F. McCord,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Harvey Mott,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
G. Rowland Munroe,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William P. Odell,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
John B. Scarlett,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Elmer K. Sexton,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Raymond E. Smith,	Nov. 20 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William W. Woodward,	Nov. 20, 1908	Jan. 12, 1909	
		Jan. 11, 1910	
		Jan. 10, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Edward D. Dunn,	Jan. 9, 1912	Jan. 14, 1913	

Sixth. That, from time to time, said Roseville Trust Company, pursuant to law and to its certificate of incorporation and by-laws, duly elected its President and its first and second Vice-Presidents, for terms of one year according to the by-laws, and duly re-elected said officers for like terms from year to year as hereinafter stated; that the following statement shows, as to each of said officers, his name, his title, the several dates of his election and re-election; that each of said officers, as shown in the following statement, duly qualified as such, promptly after the date of his election and continued to serve throughout his term as elected or re-elected and served as such continuously down to the 14th day of August, 1913.

Name.	Office.	Date of Election and Re-election.
William P. Odell,	President,	Nov. 20, 1908
		Jan. 20, 1909
		Jan. 18, 1910
		Jan. 11, 1911
		Jan. 9, 1912
		Jan. 14, 1913
William Fairlie,	First Vice-President	Nov. 20, 1908
		Jan. 20, 1909
		Jan. 18, 1910
		Jan. 11, 1911
		Jan. 9, 1912
		Jan. 14, 1913
Harry W. Foster,	Second Vive-President,	Jan. 20, 1909
		Jan. 18, 1910
		Jan. 11, 1911
		Jan. 9, 1912
		Jan, 14, 1913

Seventh. That, pursuant to its by-laws, the Board of Directors of said Roseville Trust Company, at a meeting thereof duly convened on or about November 20th, 1908, duly appointed one Raymond E. Smith as Secretary and Treasurer of said Roseville Trust Company, to serve as such Secretary and Treasurer, according to the by-laws, during the pleasure of said Board of Directors; and said Raymond E. Smith thereupon duly qualified and entered upon his duties as such Secretary and Treasurer and continued to act and serve as such as was the pleasure of said Board of Directors, down to the 14th day of August 1913. That on January 9th, 1909, the said Board of Directors, according to the by-laws, duly reaffirmed their said pleasure in having said Raymond E. Smith continue to serve as such Secretary and Treasurer, and duly confirmed his appointment as such at a meeting of said Board of Directors duly convened.

Eighth. That, pursuant to the by-laws, the Board of Directors of said Roseville Trust Company from time to time elected and re-elected an executive committee from their own number, for terms of one year each, according to the by-laws; that each member of said committee duly qualified as such and entered upon his duties as such promptly after his election and continued to serve during the several terms for which he was elected and re-elected, and continued to serve as such without interim down to the 14th day of August, 1913, except as hereinafter stated to the contrary; that the following statement shows, as to each of the members of said executive com-

mittee, his name, the several dates of his election and re-election, and the date when he ceased to act as such member of the executive committee:

Name.	Date of Election	Date of Re-election.	Date When Ceased to Act as Member of Executive Committee.
William P. Odell,	Nov. 20, 1908	Jan. 20, 1909	
		Jan. 18, 1910	
		Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William Fairlie,	Nov. 20, 1908	Jan. 20, 1909	
		Jan. 18, 1910	
		Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Harry W. Foster,	Nov. 20, 1908	Jan. 20, 1909	
		Jan. 18, 1910	
		Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
G. Rowland Munroe,	Nov. 20, 1908	Jan. 20, 1909	
		Jan. 18, 1910	
		Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
William J. Banister,	Nov. 20, 1908	Jan. 20, 1909	
		Jan. 18, 1910	
		Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Worthington H. Ingersoll,	Nov. 20, 1908	Jan. 20, 1909	Between
		Jan. 18, 1910	May 8, 1812
		Jan. 11, 1911	and
		Jan. 9, 1912	Oct. 28, 1912
William W. Woodward,	Nov. 20, 1908	Jan. 20, 1909	Jan. 9, 1912
		Jan. 18, 1910	
		Jan. 11, 1911	
John B. Scarlett,	Jan. 18, 1910	Jan. 11, 1911	
		Jan. 9, 1912	
		Jan. 14, 1913	
Charles C. Lurich,	Jan. 9, 1912	Jan. 14, 1913	
Harvey Mott,	Jan. 14, 1913		

That the by-laws of said Roseville Trust Company were duly amended on the 11th day of January, 1910, as hereinbefore alleged, so as to increase the number of said executive committee from 6 to 8.

Ninth. Your orator further alleges that promptly after taking possession of the property and business of said Roseville Trust Company as Commissioner of Banking and Insurance as aforesaid, your orator as such Commissioner forthwith gave notice of such facts to all banks, trust companies, associations and individuals to him known or appearing on the books of said Roseville Trust Company holding or in possession of any assets of such trust company; that your orator thereupon proceeded to liquidate the affairs of said trust company according to the said act as amended, and forthwith made careful examination of the affairs and management of said trust company, and has been and is diligently engaged in collecting its assets, and paying same to creditors under the direction of the Court of Chancery, except such creditors as have compromised with your orator with the approval of said Court of Chancery as hereinafter set forth; that your orator has realized upon all or nearly all of the good assets of said trust company, except such as are in litigation; that, as a result of the examination of your orator and of his transactions and proceedings in the liquidation of the affairs of said trust company, your orator alleges and charges that the said Roseville Trust Company suffered large losses in excess of $640,000, the precise extent of which is to

your orator unknown, but which he prays may be ascertained by a proper accounting herein and decreed to be paid in this suit; so that said trust company became insolvent and failed.

Tenth. Your orator further shows that said losses, some of which your orator has hereinafter particularized, were brought about, and the failure and insolvency of said Trust Company occasioned, by the neglect and failure of Directors of said Roseville Trust Company to perform faithfully and diligently the lawful duties as such Directors as hereinafter more particularly set forth, to wit:

Eleventh. It was the duty of the Directors as aforesaid by reason of the nature of their office and of their respective oaths of office, by reason of the principles of the common law applicable thereto, by reason of the aforesaid "Act Concerning Trust Companies" as amended as aforesaid, and the other statutes duly made and provided and applicable thereto, and by reason of the certificate of incorporation of said Trust Company and by reason of its by-laws as amended, as more fully set forth herein, diligently, carefully and honestly to administer the property and affairs of said Trust Company; to employ none but honest and competent officers, agents and employees of such Trust Company and to provide and maintain suitable and proper checks and safeguards upon the acts and conduct of such officers, agents and employees in and about the management and operation of said Trust Company; to keep correct books of account of their transactions as Directors, and to cause correct books of account

of the transactions of their subordinates and of the Trust Company generally to be kept and reviewed at proper intervals; to see that the business of the said Trust Company was prudently conducted; to see that the property of the said Trust Company was not wasted, stolen or squandered; and it was further their duty, for the reasons aforesaid, not to permit the accounts of the depositors of said Trust Company to become overdrawn; not to permit loans to, nor to purchase or invest in promissory notes made or endorsed by, persons of doubtful moral or financial responsibility or upon insufficient security; to see that said Trust Company, at all times, had on hand in available funds an amount equal to at least fifteen per centum of all its immediate demand liabilities, four-fifths of said available funds to consist of balances due from good solvent banks or trust companies, and one-fifth to be held as reserve in cash on hand; not to permit any loan to be made to any of its officers or Directors or clerks, tellers, bookkeepers, agents, servants or other persons in its employ until the proposition to make such loan in form according to law by the Board of Directors or executive committee thereof; not to permit its said Directors, officers or employees as aforesaid, or any of them, to become liable to said Trust Company by reason of overdrawn account; not to permit new loans to be made other than by purchasing bills of exchange payable at sight, nor to make and pay any dividends when the available funds of such company should be below fifteen per centum of its immediate liabilities; to make, in person or by committee, frequent examination as to the re-

sponsibility and continued responsibility, moral and financial, of each of the Trust Company's borrower's including makers and endorsers of its bills purchased, and as to the adequacy in amount and security of all collaterals; to appoint from time to time, from the Board of Directors of said Trust Company, an examining committee whose duty was and should be to examine the condition of said Trust Company at least once every six months and to report forthwith to the Board of Directors, giving in detail all items included in the assets of said Trust Company which they had reason to believe were not of the value at which they appeared on the books and records of the company and giving the value in their judgment, of each of such items; and to cause said report to be recorded in the minute book of the company; to ascertain, from time to time, whether the capital stock of said Trust Company has been impaired by reason of losses sustained through bad debts, defalcations, falsification of records, or otherwise; and generally to perform, faithfully and diligently, their duties as such Directors.

Twelfth. That the Directors of said Trust Company as aforesaid utterly failed to perform their aforesaid duties as such Directors, in that, during the period aforesaid, they paid little or no attention to the affairs of said Trust Company, and allowed the said Trust Company to be improvidently, recklessly and criminally mismanaged and its funds stolen and squandered and misapplied by the untrustworthy and incompetent persons whom they placed and retained in of-

fice and in the employ of said Trust Company, and particularly in that they failed to perform each and every one of the duties described in Paragraph 11th of this bill of complaint, the failure to perform each of which duties is hereby alleged by this reference as if each of said duties and failure to perform same were fully set forth in this twelfth paragraph of the bill of complaint; and your orator further shows that said Directors allowed said Trust Company to be managed by the Treasurer and other officers and employees without control, direction or supervision; that particulars of their failure as aforesaid, as to several of the duties above specified, are more particularly hereinafter set forth.

Thirteenth. Your orator further shows that the said Directors of said Trust Company utterly failed in their duty to employ none but honest and competent officers, agents and employees of said Trust Company, in that, during the period aforesaid, they employed or caused to be employed one Raymond E. Smith as Secretary and Treasurer of said Trust Company, in whom they placed and continued to place practically the entire responsibility for the management of its affairs; that the said Raymond E. Smith was not an honest or competent servant nor fitted to perform the duties and live up to the responsibilities entrusted to him; that the said defendants and other Directors knew or ought to have known such facts when they employed said Smith; and moreover they knew or ought to have known from his acts as such Treasurer and the record of said acts, of his incompetent and untrustwor-

thy character, which acts are hereinafter described more particularly. That during said period, said Directors employed and maintained in the employ of said Trust Company certain other persons who were neither reliable nor fitted for their duties as employees of said Trust Company, and who, at the direction of said Smith, made improper entries in its books and showed themselves to be untrustworthy, incompetent and wholly unfit in other respects, to wit: A. Randolph Jennings and William J. Thompson, tellers, and Charles Mindnich, a bookkeeper, who, together with said Smith, constituted practically the entire force employed by said Trust Company; all of which facts said Directors knew or should have known in the exercise of reasonable diligence.

Fourteenth. Your orator further shows that, during the period above mentioned, and prior to the 1st day of February, 1912, the said Raymond E. Smith, to the knowledge of all the Directors of said Roseville Trust Company, embarked upon and throughout the period referred to herein was engaged in a personal and individual business career and continuously from that date down to August 14, 1913, engaged openly and publicly in the automobile business under the trade name of "Oakland Motor Sales Company," which individual business enterprise, conducted as aforesaid throughout said period by the said Smith, involved the investment and handling of large sums of money and other capital and involved the devoting by said Smith of a large part of his time and energy for the exclu-

sive use of which he was being paid a salary of upwards of $2,700 per annum by the said Roseville Trust Company; that the said Directors well knew or should have known, and it was notorious, that the said Smith, at the time he entered the employ of said Roseville Trust Company, was a man of little or no means, and that, between that time and the aforesaid date upon which he entered into said private business, the said Smith could not honestly have come by funds sufficient to provide capital for his said individual enterprise. That said Smith, prior to the 12th day of February, 1912 became a large stockholder, a managing officer and a Director of the Home Ice and Products Company, a mercantile corporation and of the Dunnellen Coal and Supply Company and of the Intercity Land and Securities Company, other business corporations, to and in which enterprises and other speculations Smith thereafter, throughout the period of his connection with said Trust Company, continued openly and to the knowledge of said Directors to devote much time and to be largely interested in a financial way. That the several acts and doings of said Smith in his individual enterprises as aforesaid were plain and sufficient notice to said Directors of said Roseville Trust Company that said Smith was not performing and could not perform his duties as Secretary and Treasurer of said Roseville Trust Company in a faithful competent and honest manner and that he was not a fit person to whom to entrust the affairs and management of said Roseville Trust Company, and required said Directors, in the exercise of reasonable care and attention to their du-

ties, to examine into the true condition of said Trust Company's affairs under the almost exclusive management of said Smith.

Fifteenth. Your orator further shows that said Directors utterly failed in their duty to see that the business of said Trust Company was prudently conducted and its property not wasted, stolen or squandered, in that, during said period, said Raymond E. Smith, an employee of said Roseville Trust Company, on divers occasions and at frequent intervals, committed outright thefts of money and other property of said Roseville Trust Company, which thefts amounted, in the aggregate to upwards of $88,283.78, and which thefts are more particularly and fully described in Exhibit "E," hereunto annexed and hereby made part of this bill of complaint. Said Exhibit "E" sets forth the approximate date of each of said thefts, the property stolen and the value thereof in each instance.

Sixteenth. Your orator further shows that said Directors utterly failed in their duty not to permit the accounts of the depositors of said Trust Company to be overdrawn, in that, during said period, said Directors permitted certain depositors to overdraw their accounts in said Roseville Trust Company in large sums aggregating $10,867.70, no part of which overdrafts has been repaid; that, for example, said Directors permitted Intercity Land and Securities Company, a corporation of which the said Raymond E. Smith was a Director, and which was a depositor in said Roseville Trust Company, to overdraw its account to the extent of $687.58, without security,

no part of which overdrafts has been repaid; that, for example, said Directors permitted one Frank Bruno and one Antonio Miele, individually and as co-partners, depositors in said Roseville Trust Company, to overdraw their accounts in the sum of $6,147.85, without security, no part of which overdrafts has been repaid; that attached hereto, as Exhibit "F" hereof and hereby made part of this bill of complaint, is a statement describing several similar overdrafts permitted by said Directors, which Exhibit "F" describes, in each instance, the name of the depositor and the aggregate amount of his overdrafts; that the instances of overdrafts described in said Exhibit "F" are typical of all overdrafts as herein alleged.

Seventeenth. That at frequent intervals throughout said period, in addition to the instances of overdrafts above described, and not included in said Exhibit "F," said Directors permitted said Raymond E. Smith to pay or cause to be paid out of the funds of said trust company divers checks and drafts of certain depositors therein who then had on deposit to their credit therein little or no funds and who were financially irresponsible, and known by said Smith and said Directors to be such, to the aggregate extent of upwards of $117,173.06, and to fail to charge the amounts of said checks and drafts to the deposit accounts of said depositors. That the frequency of instances of the aforesaid, and the number of depositors concerned therewith, and the amounts of money so paid out, as compared with the total liabilities of said trust company, were

such as to put said Directors on notice of said unlawful payments and failures to charge, in the exercise of ordinary business judgment and care on the part of said Directors. That annexed hereto as Exhibit "G," and hereby made part hereof, is a statement describing instances of such uncharged checks and drafts, showing, as to the checks and drafts drawn by one John B. Scarlett, the several amounts thereof and dates thereof, and as to those of other depositors in each instance the name of the depositor and the aggregate of said checks and drafts. That no part of said uncharged checks and drafts, so paid as aforesaid, has been repaid, and said trust company received no value or consideration for any of said payments.

Eighteenth. That the Directors of said trust company utterly failed in their duty to keep or procure to be kept at all times on hand available funds amounting to at least 15 per centum of its immediate demand liabilities, which duty is more particularly set forth in Paragraph Eleventh aforesaid, in that, on and after January 1, 1913, and continuously down to August 14, 1913, the amount of available funds on hand was less than 15 per centum of immediate demand liabilities of said trust company, and in that the amount of cash on hand was less than one-fifth of 15 per centum of said demand liabilities.

Nineteenth. Your orator further shows that the said Directors utterly failed to perform their duty as described in said Paragraph Eleventh not to make or permit to be made new loans except

those expressly permitted as provided by law, whenever the available funds should be below 15 per centum of the immediate liabilities, in that, on January 1, 1912, and continuously thereafter, down to August 14, 1913, the said Directors permitted many new loans to be made, as will hereafter more fully appear, though throughout said period the available funds of said Roseville Trust Company were below 15 per centum of its immediate liabilities.

Twentieth. Your orator further shows that said Directors wrongfully and negligently made and approved large loans to and invested in and purchased promissory notes made by or made and endorsed by persons lacking in financial means and responsibility, and lacking in assets wherewith to repay the said loans or pay the said notes, and, in the instances where security was required, upon supposed security which was worthless and known to be such, or which said Directors should have known to be such; that moreover said Directors failed in their duty, as described in Paragraph Eleventh hereof, to make, in person or by committee, frequent examinations as to the responsibility and continued responsibility, moral and financial, of each of the trust company's borrowers and the makers and endorsers of its promissory notes and of each of them, and as to the adequacy in amount and security of its collaterals; that, for example, the said Directors approved loans to and purchased bills or note of International Tobacco Company, aggregating $11,429.87, although said company was then financially irresponsible and although the security by endorse-

ment or otherwise which it offered was worthless, as said Directors knew or ought to have known; and that said Directors approved loans to and purchased bills of Antonio Miele and Frank Bruno individually and as co-partners, aggregating $56,006.16, although said Miele and Bruno were then financially irresponsible and although the security by endorsement or otherwise which they offered was worthless, as the said Directors knew or ought to have known. That annexed hereto as Exhibit "H," and hereby made a part of this bill of complaint, is a statement describing numerous instances of such improper and worthless loans and purchases of worthless promissory notes made or authorized by said Directors, aggregating after deducting all partial payments that have been made the sum of $179,419.31, describing in each instance the details thereof.

Twenty-first. Your orator further shows that said Directors utterly failed in their duty to make, publish and issue true report to the Commissioner, in that, during the period above named, on divers occasions they prepared, issued and made public, as part of the official statements of said Roseville Trust Company, statements wherein the amount of is liabilities were grossly understated, so that the apparent condition of said Roseville Trust Company affairs was grossly different from its actual condition.

Twenty-second. Your orator further shows that, from the time of the organization of said Roseville Trust Company down to the date of the closing of its doors on August 14, 1914, and through-

out the intervening period, the said Directors had among them no officer and had no person in the employ of the Trust Company except the said Raymond E. Smith who was at all familiar with the business of banking and the business of conducting a trust company or who had had any prior experience therewith; that throughout said period the said Directors entrusted practically the entire management and responsibility of the business and affairs of said Trust Company to said Raymond E. Smith and that, according to the practice adopted by or permitted by said Directors, no person, either Director, officer or fellow-employee of said Smith, had any supervision or independent control of or review, scrutiny of or check upon any of his acts as Secretary and Treasurer and manager of said Roseville Trust Company; all of which was contrary to safe and usual banking practice and practice in the conduct of of trust companies, as said Directors knew or ought to have known upon reasonable inquiry and attention to their duties. That the records and entries of all the transactions of the Trust Company and is several books of account were collected together and summarized in the general ledger; that the entire control of said general ledger was left in the hands of said Smith; that no other officer or employee had charge of or to do therewith; that said practice afforded said Smith uninterrupted opportunity to conceal, by his manipulations of the accounts in said ledger, the irregular and unlawful transactions and stealings being carried on by said Smith, which opportunity said Smith took increasing advantage of as time went

on and it became apparent that he might do so with impunity. That the practice in all well regulated trust companies and banking institutions, as said Directors knew or ought to have known upon reasonable inquiry, is to provide that the keeping of the books and the making of entries therein is performed, not by the Treasurer or other managing officer of the institution, but by a bookkeeper or other subordinate at a smaller wage, in order that an independent check and scrutiny may be had upon and over the transactions and operations of the Treasurer or other managing officer, and also to the end that there may be greater economy of effort. That, contrary to said usual and proper practice, the said Raymond E. Smith, throughout said period, and more particularly from January 1, 1912, down to the 14th day of August, 1913, made a daily practice of spending hours in working upon and making entries in the books of said Trust Company; and this practice was repeatedly brought to the attention of the said Directors, which should have called to the attention of said Directors in the exercise of ordinary business care and judgment that not only was there a total lack of economy of effort as to the labors of the several employees of said Trust Company, but also that there existed certain persistent and continuing irregularities in the keeping of said books which should require so much of the attention of the managing officer of said Trust Company. That, by reason of the failure and neglect of the Directors to change the practice and policy and to institute inquiry to learn whether any irregularities had occurred

necessitating the frequent working upon and entries in said books by the said Treasurer, the stealings and other unlawful diversion of the Trust Company's funds continued and increased as herein elsewhere more fully set forth.

Twenty-third. That none of the officers or Directors devoted any time to the affairs of the bank, except periodic, infrequent visits to the bank made by the President or one of the Vice-Presidents, or occasional visits from members of the Board of Directors. That said Smith, knowing that none of said officers or Directors knew or made any effort to learn the details of the Trust Company's business, started, in the early period of the Trust Company's existence, improperly to divert and steal portions of the Trust Company's funds and to commit the unsafe practices hereinabove alleged, and that, being left undisturbed in the sole management and control of the Trust Company and in charge of its general books of account, he continued at frequent intervals and in increasing amounts to embezzle and misapply the funds of said Trust Company, to make improper loans, to pay improper overdrafts, all as in this bill of complaint more fully recited and set forth; that the amount of said embezzlements, misapplications and diversions of funds increased from and after November 1, 1912, steadily down to the date of the closing of the institution, resulting in the losses herein referred to and set forth; that throughout this period a proper examination by the Directors or by independent examiners selected or appointed by said Directors would have, at any time, resulted in a disclosure of the ir-

regularities and the diversion of funds on the part of said Smith and would have resulted in the installation of suitable and proper safeguards and checks which would have prevented subsequent losses of the Trust Company's funds, and would have effected the recovery of a large portion of the moneys so diverted and lost; that no such examination was at any time made, and no such safeguards or checks were installed or provided, and the free and uninterrupted handling of the Trust Company's funds and keeping of its records by said Smith were left undisturbed, resulting in the losses referred to and herein more fully set forth.

Twenty-fourth. That at the time of the organization of said Trust Company, which was the time that said Directors first took said Raymond E. Smith into the employ of said Trust Company, said Raymond E. Smith was a man of doubtful banking reputation and record, which fact said Directors knew or might have known upon reasonable inquiry or attention to their duties and which would have disclosed to them that said Smith was not a fit person to be entrusted with the duties of Secretary and Treasurer of said Roseville Trust Company. That on May 14th, 1909, one Vivian M. Lewis, then the Commissioner of Banking and Insurance of the State of New Jersey, wrote a letter to William P. Odell, one of said Directors, as President of said Roseville Trust Company, a copy of which letter is annexed as part of Exhibit "I" and hereby made part of this bill of complaint, which letter constituted a plain warning to the Directors that said Raymond E. Smith

was not a safe person to whom to entrust the management of the property and affairs of said Roseville Trust Company or, indeed, any duties or responsibilities whatsoever in said Roseville Trust Company. That the aforesaid letter of Vivian M. Lewis, dated May 14, 1909, was read and thoroughly discussed by the Directors of the said Trust Company; that thereafter and as a result of said letter said Smith offered his resignation as Treasurer and Secretary of the said Roseville Trust Company. That, at a meeting of said Directors held June 21, 1909, at which all of the then Directors, except G. Rowland Munroe, were present, said Directors, by appropriate action, unanimously refused to accept said resignation, and a motion that said Smith be retained as Secretary and Treasurer of said Trust Company was unanimously adopted. That shortly thereafter the said G. Rowland Munroe fully concurred in the aforesaid action. That thereafter the said Vivian M. Lewis as Commissioner of Banking and Insurance of the State of New Jersey, and his successors in office or their deputies, wrote numerous letters to the said Trust Company, calling attention to various instances of neglect, incompetence, laxness and irregularity in the conduct of its affairs; that each of said letters was read by the said Directors; that a copy of each of said letters and the replies of said Directors, if any, thereto, is annexed to this bill of complaint, hereby made part hereof and marked Exhibit "I." That said letters and each of them remained in the files of said Roseville Trust Company and were then accessible to such of the Directors as assumed office after the

receipt of said letters or any of them; that references to said letters were contained in the minutes of said Trust Company; that such Directors either read said letters or would have done so with reasonable attention to their duties as such Directors; that, in spite of the plain warnings contained in said letters, the said Directors continued in their course of inattention, laxness, neglect and incompetence as hereinabove described.

Twenty-fifth. That on or about the 16th day of December, 1912, the said Directors, through an examining committee of said Directors, chosen by them, consisting of Elmer K. Sexton, James B. Banister, William T. Benjamin, Clinton F. McCord and Edward D. Dunn, made, or pretended to make, as required by law, an examination of the books of the said Roseville Trust Company as of the 14th day of December, 1912; that, in order to make such examination, it was necessary to examine the general ledger and the two ledgers containing the individual demand deposit accounts known as Individual Demand Ledger No. 1 and Individual Demand Ledger No. 2 respectively; and without examining said books it was impossible to make any examination of the affairs of the Roseville Trust Company whatsoever; that, on the said occasion, said Examining Committee did examine said three books or pretended to do so. That on the date of said examination there existed upon the face of said general ledger the grossest and most palpable of false and fraudulent entries, including discrepancies in the daily trial balance for December 14, 1912, the day as of which said examination was made, amounting to $98,000,

which any person of ordinary intelligence would have discovered by a mere reading of the entries in said general ledger as of the date of said examination, or by a mere comparison of the entries in the daily trial balance of said date with the corresponding entries for the day previous, in the next adjoining columns, from which said entries were supposedly extended; that said Examining Committee did not on said occasion report to the Board giving in detail all items included in the assets of the Trust Company which they had reason to believe were not of the value at which they appeared on the books and records of the Trust Company, and giving the value, in their judgment, of each of said items; nor did said Directors cause said report to be recorded in the minute book of said company; that said examining committee did not ascertain whether the capital stock of said Trust Company had been impaired by reason of losses sustained through bad debts, defalcations, misapplication and diversion of its funds, falsifications of records or otherwise. That a reasonably careful and competent examination on said occasion would certainly have resulted in the discovery of all the shortages then apparent on the face of the general ledger of said Roseville Trust Company; that the amount thereof was then $98,000 in addition to other shortages which did not there appear; that said false entries were the work of said Raymond E. Smith and were made by him in an endeavor to conceal said shortages; that their discovery would have resulted in the removal of said Smith and would have effectually prevented any further embezzlements or other losses that,

as a matter of fact, said Raymond E. Smith continued to embezzle from, missapply funds of, and defraud said Roseville Trust Company after said occasion resulting in an additional loss occurring after said occasion of upwards of $250,000 to said Roseville Trust Company, all of which would have been prevented by a reasonably careful or competent examination by said examining committee on said occasion. That the report of said examining committee on its face indicated that proper care had not been employed in the making of said examination; that said report was duly presented to and approved and accepted by said Directors at a meeting of the Board of Directors held on or about February 11, 1913. Said Raymond E. Smith thereafter continued to embezzle and improperly divert and misapply the funds of said Roseville Trust Company and to defraud it, and continued to falsify the books, so that the amount of the losses resultant thereon apparent on the face of the general ledger on May 22, 1913, was approximately $200,000. That on the 22nd day of May, 1913, an examining committee of said Directors, consisting of Elmer K. Sexton, James B. Banister, Clinton F. McCord and George E. Krug, made or pretended to make an examination of the books of said Roseville Trust Company as of the 21st day of May, 1913; that on the date of said examination there existed upon the face of the general ledger of said Roseville Trust Company and the individual demand ledgers the grossest and most palpable of false and fraudulent entries made by said Smith in a crude attempt to conceal the said short-

ages, for example: the footing of the column of daily trial balance as of said date was erroneous to the extent of $200,000. Moreover, other falsifications of the books existed on said date and would have been discovered by a reasonably competent examination; for example: three large debits to the Union National Bank of Newark, which appeared on the cash book of said Roseville Trust Company, were not posted in the general ledger, and one large debit, appearing on said cash book, to the Irving National Bank, New York, was not posted in the general ledger. Upwards of $50,000, reported to be in transit for deposit in correspondent banks, was wholly non-existent, as the said examining committee might easily have discovered upon later inquiry from said correspondent banks, which inquiry it was their natural and reasonable duty to make. That the discovery of these and other instances of falsification on or about said date would have resulted in the removal of said Smith, and would have effectually prevented any further losses, and would have led to the recovery of large portions of the losses already incurred; that, as a matter of fact, said Smith continued to embezzle, misapply, and improperly divert the funds of said Roseville Trust Company after said occasion, resulting in an additional loss of upwards of $100,000 to said Roseville Trust Company; that the said report of said examining committee indicated on its fact that proper care had not been employed in making said examination; that said report was duly presented to and approved and accepted by said Directors at a meeting of the Board of Directors held on or about

July 8, 1913; that said examining committee did not on said occasion report to the Board giving in detail all items included in the assets of the Trust Company which they had reason to believe were not of the value at which they appeared on the books and records of the Trust Company, and giving the value, in their judgment, of each of said items; nor did said Directors cause said report to be recorded in the minute book of said company; that said capital stock of said Trust Company had been impaired by reason of losses sustained through bad debts, defalcations, falsifications of records or otherwise.

Twenty-sixth. Your orator further shows that, throughout the period aforesaid, said Raymond E. Smith distributed, at the regular meetings of the Board of Directors and of the executive committee of said Roseville Trust Company, to the Directors then and there present, certain statements or supposed statements of the condition of the Roseville Trust Company on each of the dates of said meetings, purporting to show the amounts and general items of assets and liabilities, and, in particular, purporting to show the amount of funds of said Roseville Trust Company on deposit with other banks, that in many such instances, the amount of said bank balance so shown was fictitious and greatly in excess of the true amount and in excess of the amount required by law and good banking practice to be kept on hand for the operations of the said Roseville Trust Company; that the said identical statements also showed that, on the same dates, large sums of money were owed to other banks by said Roseville Trust Company upon its

notes, upon which five or six per cent interest was being paid; that, if the said Directors had performed their plan and clear duty as such Directors, they would have promptly made inquiry with a view to paying off or reducing such large loans with such portion of said alleged bank balance as were not required by law and good banking practice for the operations of said Trust Company; that, if they had made such inquiry, and moreover, if they had performed their plain duty to learn the amount of said bank balances from the original sources of information easily at hand, *i. e.*, from the banks with whom said Roseville Trust Company had or purported to have balances on deposit, they would have learned that the amounts of said bank balances, as so stated, were grossly inflated and fictitious, and would have recovered the losses already referred to and would have saved further loss to said Roseville Trust Company.

Twenty-seventh. That, during the early Spring of the year 1913 there was an unusual falling off in the amount of deposits in said Roseville Trust Company as reported by said Raymond E. Smith, which reports did not state the true facts as to the amounts of said deposits but were made by said Raymond E. Smith for the purpose of reducing the apparent amount of the liabilities of said Roseville Trust Company and thus concealing the losses as aforesaid; that the said apparent decrease of deposits was not only normally to be expected under the circumstances but incompatible with the fact, as reported by said Smith to said Directors, that the number of said deposit accounts

was steadily increasing; so that the said Directors should at once have made an investigation, which, if made, would have promptly resulted in a discovery of the true facts as aforesaid, and would have disclosed to them that during this period the true amount of deposits exceeded, by nearly $300-000, the amount of deposits reported by Smith.

Twenty-eighth. That all of the said thefts and other improper diversions of the funds of said Roseville Trust Company committed by Smith and other employees of said Roseville Trust Company as aforesaid, were accomplished in such a manner that they would have been promptly discovered by the Directors or any of them had any proper investigation been made at any time; and repetition of said acts as aforesaid could have been prevented, and recovery had of said losses or a large part thereof.

Twenty-ninth. That, in addition to the losses above set forth, the said Roseville Trust Company sustained other losses during said periods entirely as a result of the careless, reckless and illegal management of said Trust Company by your Directors, the particulars of which your orator is not able to set forth but which are well known to said Directors; and which your orator prays may be ascertained by a proper accounting herein and decreed to be paid in this suit.

Thirtieth. That said Smith, Jennings, Armstrong, Scarlett, Bruno, Miele, Home Ice and Products Company, Intercity Land and Securities Company, International Tobacco Company and the greater number of the several employees, de-

positors, note-makers, endorsers and other persons concerned with said losses described in this bill of complaint, are insolvent, and not more than $5,000 will be recovered in the aggregate from said insolvents or their estates on account of said losses.

Thirty-first. Your orator further shows that it was the lawful duty of the said Directors of said Roseville Trust Company not to declare or pay dividends upon its capital stock, except out of surplus or profits actually earned, over and above the amount of the liabilities and capital stock of said Roseville Trust Company; that the said Directors of said Roseville Trust Company utterly failed in their said duty in that, in violation of law, they declared dividends and caused dividends to be paid on several dates when no profits had been earned and when there was no surplus of assets over and above the amount of the liabilities and capital stock of said institution, but when, on the contrary, the total of the liabilities and capital stock of said Roseville Trust Company greatly exceeded in amount its assets at a reasonable valuation. The following statement shows the dates and amounts of the several dividends so declared, each of which dividends was duly authorized and declare at a meeting of the Board of Directors duly convened on the date shown in said statement, and thereafter paid. That a large part of said dividends was received by said Directors themselves as stockholders of said Roseville Trust Company.

Date Payable.	Amount of Dividend.
January 3, 1911	$1,500.00
April 1, 1911	1,500.00
July 1, 1911	3,500.00
October 2, 1911	1,500.00
January 2, 1912	3,500.00
April 1, 1912	1,500.00
July 1, 1912	3,500.00
October 1, 1912	1,500.00
January 1, 1913	3,500.00
April 1, 1913	1,500.00
July 1, 1913	3,500.00

Thirty-second. That William P. Odell, William Fairlie, John S. Bell, Fred Kilgus, William J. Banister, Clinton F. McCord, James B. Banister, William W. Woodward and Elmer K. Sexton, certain of said Directors, have made partial restitution of said losses, which your orator has accepted from them respectively, in settlement of his claims against them severally in behalf of said Roseville Trust Company, pursuant to an agreement duly made with said Directors on December 10, 1913, and pursuant to an order of this Court made December 30, 1913, and pursuant to the express provisions of statute, but without prejudice to the causes of action against the other Directors as herein alleged. That certain of said Directors paid the amounts of their said settlements in cash and others by the surrender of credits which existed in their favor on the books of said Trust Company That annexed hereto as Exhibit "J" is a statement showing, as to each of said settlements, the name of the Director, the amount of set-

tlement, and whether in cash or surrender of credit as aforesaid. That your orator, upon and after entering upon the discharge of his duties under the provisions of Chapter 171 of the Laws of 1913 aforesaid, duly made or caused to be made an examination of and a valuation of each and every item found among the assets of said Roseville Trust Company and collected and caused to be collected such of said assets as were reducible to cash; that on or about the 10th day of December, 1913, your orator as Commissioner of Banking and Insurance as aforesaid entered into an agreement for the sale of all of the assets and property of the said Roseville Trust Company except claims against Directors and officers growing out of negligence or improper conduct of such Directors or officers, and except claims for loss based upon bonds given to insure the fidelity of officers and employees, and except such concealed assets, if any, belonging to the said Roseville Trust Company, which your orator had not nor had any one in his behalf discovered but which might thereafter be found and reduced to possession. That the purchase price obtained by your said orator for all of the said assets as aforesaid was the sum of $531,434. 97 which was the best price obtainable there by your orator, and the said sale was made with the approval and consent of nearly all of the creditors of the said Roseville Trust Company and was in the manner provided by law, duly approved by the Court of Chancery. That, from the proceeds of said sale and from the moneys received from certain of the Directors who have compromised with your orator as referred to as hereinabove

your orator has paid and provided for the necessary expenses of taking possession of and liquidating the affairs of said Roseville Trust Company as provided for by the aforesaid statute, being Chapter 171 of the Laws of 1913, and has distributed and is distributing to creditors of said Roseville Trust Company the balance of said moneys; that as a result of the foregoing acts, omissions and neglect of the said Directors, the said Roseville Trust Company suffered losses during the times above mentioned, of upwards of $640,000 the precise extent of which is to your orator unknown, but which he prays may be ascertained by a proper accounting herein and decreed to be paid in this suit.

Thirty-third. That the said Directors Harvey Mott, Emile C. Bataille, William T. Benjamin, Harry W. Foster, Worthington H. Ingersoll, William F. Keim, George E. Krug, Charles C. Lurich, G. Rowland Munroe, John B. Scarlett, Raymond E. Smith, and Edward D. Dunn are, in justice and equity, obliged to pay your orator as Commissioner of Banking and Insurance of the State of New Jersey the several sums of money lost by said Roseville Trust Company as aforesaid, occasioned by their said negligence and malfeasance as aforesaid, and to account for whatever moneys have been lost thereby; that your orator has frequently applied to the said Directors and requested them to come to an account with him as Commissioner as aforesaid and to pay him the amount of said losses, and your orator still hoped that said Directors would have complied with such a reasonable request, as in justice and equity they ought to have

done; but they have refused and still refuse to do so, alleging and pretending that they have faithfully and legally discharged their duties as such Directors.

All of which actings, doings and pretenses of the Directors are contrary to equity and good conscience, and tend to manifest wrong, injury and oppression to your orator in the premises. To the end, therefore, that the said Directors Harvey Mott, Emile C. Bataille, William T. Benjamin, Harry W. Foster, Worthington H. Ingersoll, William F. Keim George E. Krug Charles C. Lurich G. Rowland Munroe, John B. Scarlett, Raymond E. Smith and Edward D. Dunn and each of them may, but without oath, answer under oath being hereby duly waived, to the best and utmost of their knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, and as fully and particularly as if the same were here again repeated and they and each of them distinctly interrogated thereunto, and that an account may be taken to ascertain the amount of the losses suffered by the company, and your orator, by reason of the negligent, illegal and improper conduct of the said directors as aforesaid, that it may be ascertained for what amount each of said Directors should be held responsible on account of the matters hereinbefore alleged; and that they may be required, by a decree of this honorable Court, to pay your orator the amounts thereof in order that the same may be distributed as required by law, and that your orator may have such further and other relief as may seem just.

Bill of Complaint

May it please your Honor, the premises considered, to grant unto your orator the State's writ of subpoena, issued out of and under the seal of this honorable Court, to be directed to the said Harvey Mott, Emile C. Bataille, William T. Benjamin, Harry W. Foster, Worthington H. Ingersoll, William F. Keim, George E. Krug, Charles C. Lurich, G. Rowland Munroe, John B. Scarlett, Raymond E. Smith and Edward D. Dunn, commanding them, and each of them, by a certain date 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 premises and henceforth to abide by and perform said order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And you orator, as in duty bound, will ever pray, etc.

Complainant.

Solicitor for Complainant.

Of Counsel.

Exhibit A

CERTIFICATE OF INCORPORATION
OF
ROSEVILLE TRUST COMPANY

THIS IS TO CERTIFY, That we, the undersigned, do hereby associate ourselves into a trust company, under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An act concerning trust companies (revision of 1899)," approved March 24th, 1899, and the supplements thereto and acts amendatory thereof, we do hereby severally subscribe for and agree to take and pay for the number of shares of the capital stock of such trust company set opposite our respective names in the article "Fifth" of this certificate; and we do further certify:

FIRST. The name of the trust company hereby formed is ROSEVILLE TRUST COMPANY.

SECOND. The place where its business is to be carried on is the City of Newark, in the County of Essex, in this State, and the location of the office of said Company in this State is No. 505 Orange Street, in the City of Newark, aforesaid, and the name of the agent therein and in charge thereof, upon whom process against said corporation may be served, is Raymond E. Smith.

THIRD. The purposes and objects of said corporation are:

1. To act as fiscal or transfer agent of any state, municipality, body politic or corporation and in such capacity to receive and disburse money;

2. To transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise;

3. To receive deposits of trust monies, securities and other personal property from any person or corporation, and to loan money on real or personal securities;

4. To lease, hold, purchase and convey any and all real property necessary for or convenient in the transaction of its business, or which the purpose of the corporation may require, or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation under sales, judgments or mortgages, or in settlement or partial settlement of debts to the corporation by any of its debtors;

5. To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state;

6. To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, or to transfer any business in relation thereto;

7. To act, under the order of assignment of any court of record, as guardian, receiver or trustee of the estate of any minor, and as depository of any monies paid into Court, whether for the benefit of any such minor or other person, corporation or party;

New Jersey State Library

8. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept;

9. To take, accept, and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or entrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest, or otherwise, or which may be entrusted or committed or transferred or vested in it by order of any court of record, or any surrogate, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust;

10. To purchase, invest in, and sell stocks, promissory notes, bills of exchange, bonds and mortgages and other securities; and when the monies or securities for money are borrowed or received on deposit, or for investment, the bonds or obligations of the company may be good therefor, but shall have no right to issue bills to circulate as money;

11. To be appointed and to accept the assignment of assignee or trustee, under any assignment for the benefit of creditors of any debtor, made pursuant to any statute or otherwise;

12. To act under the order or appointment of the court of chancery or otherwise as receiver or trustee of the estate or property of any person, firm, association or corporation;

13. To be appointed and to accept the appointment of executor, of or trustee under the last will and testament, or administrator with or without the will annexed, of the estate of any deceased person, to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards;

14. To exercise the powers conferred on it and to carry on the business of a safe deposit company; to examine and guarantee title to land; to insure the fidelity of persons holding offices or places of trust or responsibility; and to become sole surety in any case where by law two or more sureties are required;

15. To collect coupons on, or interest upon all manner of securities when authorized so to do by the parties depositing the same;

16. To receive and manage any sinking fund of any corporation, upon such terms as may be agreed upon between said corporation and those dealing with it;

17. Generally to execute trusts of every description not inconsistent with the laws of this State or of the United States;

18. To receive money on deposit to be subject to check or to be repaid in such manner and on such terms, and with or without interest, as may be agreed upon by the depositor and the said trust company.

FOURTH. The amount of capital stock of said corporation is ONE HUNDRED THOUSAND DOLLARS divided into ONE THOUSAND shares of the par value of one hundred dollars each.

FIFTH. The names and residences of the incorporators, and the number of shares subscribed by each of them, are as follows:

(Then follow the names of the subscribers, signatures and acknowledgments of persons executing the certificate.)

STATE OF NEW JERSEY

Department of Banking & Insurance

Trenton, July 28, 1908.

I hereby approve the form of the foregoing Certificate of Incorporation of Roseville Trust Company of the City of Newark, County of Essex, State of New Jersey, and it appearing to me that the establishment of such Trust Company will be of public service, I hereby annex thereto my approval thereof, pursuant to Section 3 of "An act concerning trust companies (Revision of 1899)," approved March 24, 1899.

DAVID O. WATKINS,
Commissioner of Banking & Insurance
of New Jersey.

Exhibit B

Annexed to complaint

STATE OF NEW JERSEY

Department of Banking and Insurance

Certificate of Authority

WHEREAS, the Roseville Trust Company of the City of Newark in the County of Essex, has complied with all the provisions of an act of the Legislature of this State, entitled "An Act concerning trust companies (Revision of 1899)," approved March 24th, 1899, and the supplements thereto and acts amendatory thereof, required to be complied with before receiving authority to commence business therefore

I, David O. Watkins, Commissioner of Banking and Insurance of the State of New Jersey, do hereby certify, that the said Roseville Trust Company is duly and legally organized under said act as a trust company, and authorized to transact business as such in this State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at Trenton, this Thirtieth day of November A. D. Nineteen hundred and eight.

(Seal)

DAVID O. WATKINS,
Commissioner of Banking and Insurance.

Exhibit C

Annexed to complaint

BY-LAWS

TITLE—LOCATION—CORPORATE SEAL

1. The Title of the corporation is the ROSEVILLE TRUST COMPANY.

2. The principal office shall be in the City of Newark, State of New Jersey.

3. The Corporate seal of the Company shall have inscribed thereon the Name of the Corporation and the year of its incorporation, 1908, N. J.

DIRECTORS

4. The property and business of the Corporation shall be managed by a Board of not less than fifteen nor more than twenty-one Directors, (as may be determined by majority vote at any stockholders meeting—at which there shall be an election of directors) each of whom shall at all times hold in his own name not less than five unpledged shares of the capital stock of such Company. They shall hold office for one year, and until others are elected and qualified in their stead.

If the office of any Director becomes vacant, the remaining Directors may at a regular monthly meeting of the Board, after nomination at a previous regular meeting by ballot, with the affirmative vote of a majority present, elect a successor who shall hold office for the unexpired term. The Secretary shall give notice of the proposed election with the notice of the meeting at which the election is to be held.

Exhibits annexed to complaint

MEETINGS OF STOCKHOLDERS

5. The Annual Meeting of Stockholders shall be held on the second Tuesday of January in each year, at the Office of the Company in Newark, at 1 o'clock p. m., when they shall elect, by a plurality vote, by ballot, such number of Directors as may be decided upon as aforesaid, to serve for one year and until their successors are elected or chosen and qualified, each stockholder being entitled to one vote in person or by proxy, for each share of stock standing registered in his name ten days preceding the election.

A majority in amount of the stock outstanding shall be requisite to constitute a quorum for an election of Directors or the transaction of other business.

The polls for such election shall be opened at 1 o'clock p. m. and closed at 2 o'clock p. m.

Notice of the annual meeting shall be published in a newspaper in the City of Newark at least ten days before the date of the meeting.

Special Meetings of Stockholders shall be called by the Secretary by mailing a notice, at least five days prior to the date of meeting, to each stockholder of record at his last known postoffice, on the request in writing or by vote of a majority of the Board of Directors, or on demand in writing by Stockholders of record owning 40 per cent in amount of the entire capital stock of the Company.

Exhibits annexed to complaint

MEETINGS OF DIRECTORS

6. Regular meetings of the Directors shall be held monthly at the Office of the Company in Newark on the third Wednesday of each month, at 4:30 o'clock p. m., or, by order of the Directors, elsewhere, on a day and at an hour to be fixed by the Board. Should the third Wednesday, aforesaid, fall upon a holiday, the meeting shall be held the next business day.

Notice of such meeting shall be mailed to each Director by the Secretary at least three days previously.

The Board of Directors may once in six months designate by resolution nine members, any five of whom shall constitute a quorum.

Special Meetings of the Board may be called by the President, on one day's notice to each Director; Special Meetings shall be called in like manner on the written request of three members of the Board.

POWER OF DIRECTORS

7. The Board of Directors shall have power to elect or appoint all necessary officers, agents, employees and committees; to fix their compensation; to prescribe their duties, and to remove any appointed officer or employee; and generally to control all the affairs of the Company.

INSPECTORS OF ELECTION

8. The Annual Election of Directors shall be conducted by two Inspectors, who shall be share-

holders. They shall be chosen at the Regular Meeting of the Directors preceding the election. If any Inspector of Election fails to attend, a successor may be appointed by the Stockholders in attendance.

ORDER OF BUSINESS

9. The order of Business at the Meetings of the Board shall be as follows:

(1) A quorum being present, the President shall call the Board to Order.

(2) The Minutes of the last meeting shall be read.

(3) Reports of Officers of the Company.

(4) Reports of Committees.

(5) Unfinished Business.

(6) New Business.

OFFICERS OF THE COMPANY

10. The officers of the Company shall consist of a President, a First and a Second Vice-President, Secretary and Treasurer, and such other officers as may from time to time be elected or appointed by the Board of Directors. One person may fill the offices of Secretary and Treasurer.

OFFICERS—HOW CHOSEN

11. The Directors, by a majority ballot at the first Directors' meeting after their annual election, shall elect a President and a First and a Second Vice-President from among their own number, who shall, respectively, hold office until

their successors shall be chosen, unless sooner removed by a majority of the Board of Directors; and the Board of Directors shall fill any vacancies which shall occur among these officers by death or otherwise.

The Secretary and Treasurer shall be appointed by the Board of Directors and shall hold office at the pleasure of the Board.

DUTIES OF THE PRESIDENT

12. It shall be the duty of the President to preside at all meetings of the Board of Directors; to see that all orders and resolutions of the Board are carried into effect, to execute all contracts and agreements authorized by the Board; to sign all Certificates of Stock; to keep in safe custody the seal of the Company, and, when authorized by the Board, to affix the same to any instrument requiring the same, which seal shall always be attested by the signature of the President and of the Secretary or the Treasurer.

He shall have the general superintendence and direction of all the other officers of the Company. and shall see that their duties are properly performed.

He shall submit a report of the business of the Company at each regular meeting of the Board of Directors, and a complete report of the operations of the Company for the year, and of the state of its affairs on the 31st day of December to the Directors at their Regular Meeting in January, and to the Stockholders at their annual meeting in January of each year, and from time to time shall report to the directors all matters within

his knowledge which the interests of the Company may require to be brought to their notice.

He shall be ex-officio a member of all standing committees, except as otherwise herein specifically provided, and shall have the general powers and duties of supervision and management usually vested in the office of President of a Corporation, and shall discharge such other duties as the Board of Directors shall assign to him.

VICE-PRESIDENTS

13. The Vice-Presidents shall be vested with all the powers, and required to perform all the duties, of the President in his absence, and shall discharge such other duties as the Board of Directors shall assign to them.

THE SECRETARY

14. The Secretary shall be ex-efficio Secretary of the Board of Directors and of the standing committees. He shall attend all sessions of the Board; shall act as Clerk thereof, and record all votes and the minutes of all proceedings in a book to be kept for that purpose.

He shall perform like duties for the standing committees when required.

He shall see that proper notice is given of all meetings of Stockholders of the Company and of the Board of Directors; he shall have charge of the Certificate Book, Transfer Book and Stock-Ledger, and such other books, papers and records as the Board may direct. He shall attend to such correspondence or other duties as may be incident

to his office, or as may be assigned to him by the President, or Directors, or the Executive Committee, and shall discharge such other duties as the Board of Directors shall assign to him.

He shall be sworn to the faithful discharge of his duty. In the absence of the Secretary, or in case of his inability to act, the President may designate some person to act, subject to the approval of the Board.

THE TREASURER

15. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all money and other valuable effects in the name and to the credit of the Company in such depository or depositories as may be designated by the Board of Directors.

He shall have the custody of and be responsible for all the papers, books and accounts of the corporation. He shall sign all checks, drafts, notes and orders for the payment of money, and pay out or dispose of the same under the direction of the President or Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and Directors, at the regular monthly meetings of the Board or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Company; and at the regular meeting of the Board in January anually a like report for the preceding year.

He shall give the Company a bond in a sum, and with security, satisfactory to the Board, for

the faithful performance of the duties of his office and the restoration to the Company, in case of his death, resignation or removal from office, of all books, papers, vouchers, money, or other property or whatever kind in his possession belonging to the corporation.

The Certificates of Stock, when signed by the President, shall be countersigned by him.

DUTIES OF OFFICERS MAY BE DELEGATED

16. In case of the absence of any Officer of the Company, the Board of Directors, except as hereinabove provided, may delegate his powers and duties to any other Officer, or to any Director, for the time being.

STANDING COMMITTEES

17. There shall be an Executive Committee, consisting of the President, as Chairman, and six other Directors, to be elected by the Board, and four members shall form a quorum for business They shall be elected annually by ballot, and shall hold their offices until others are elected in their places. All vacancies shall be filled by the Board. The Chairman of the Executive Committee shall, during the pleasure of the Committee, have such powers and perform such acts as the Committee may deem necessary for the proper transaction of the current business of the Company.

The Executive Committee shall superintend and advise all investments that shall be made with the funds of the Company. The Executive Com-

mittee may, in its discretion, authorize the President to make investments without previously consulting the Committee, and all such transactions shall be reported to the Committee at its next meeting. They shall meet at regular periods, or on notice to all by any of their own number; they shall advise with and aid the officers of the Company in all matters concerning its interests and management of its business, and generally perform such duties and exercise such powers as may be directed or delegated by the Board of Directors from time to time.

They shall keep regular minutes of their transactions, and cause them to be recorded in a book kept in the office of the Company for that purpose, and report the same to the Board of Directors at their regular or special meetings.

TRANSFER OF STOCK

18. All Transfers of the Stock of the Corporation shall be made upon the books of the Company by the holder of the shares in person or by his legal representative; but no transfer of the stock shall be made within ten days next preceding the day appointed for paying a dividend or the annual meeting.

CERTIFICATES OF STOCK

19. All Certificates of Stock shall be signed by the President, or a Vice-President, and by the Secretary, and shall have affixed thereto the corporate seal.

Exhibits annexed to complaint

CERTIFICATES TO BE CANCELLED

20. No Transfer shall be permitted until the original certificate shall be surrendered and cancelled, except that in case of the loss of a stock certificate a new certificate may be issued, as provided for by law, on the furnishing of such proof of loss and of such bond of indemnity as the Directors may require.

CHECKS FOR MONEY

21. All Checks, Drafts or Orders for the payment of money shall be signed by the President, Vice-President or Treasurer, unless otherwise ordered by the Directors.

No check shall be signed by any officer of the Company in blank.

EXAMINING COMMITTEE

22. The Board of Directors shall appoint from its members annually an Examining Committee of five members, whose duty it shall be to examine the condition of the Company at least once every six months, or oftener if required by the Board, and perform such other duties as are mentioned in Section 14 of the Act concerning Trust Companies, Chapter 174, Laws of 1899.

ALTERATIONS OF BY-LAWS

23. The Stockholders, by the vote of a majority of the stock issued and outstanding, may at any regular or at any special meeting, alter or amend these By-Laws.

Exhibit D

Jan. 12, 1909—Section 17—It was voted that one more member should be added to the Executive Committee, and that a majority should constitute a quorum for the transaction of business.

April 21, 1909—Section 6—It was voted that the Directors should hold their regular monthly meeting on the second Wednesday of each month.

January 11, 1910—Section 17—It was voted that the Executive Committee should consist of the President, as Chairman, and eight other Directors.

January 9, 1912—Section 5—It was voted that the time for the annual meeting of stockholders should be three o'clock instead of one o'clock.

Exhibit E

Following are the dates, depositors' accounts from which taken, and amounts.

Dec. 18, 1911, R. Sharwell	$5,112.80
Jan. 11, 1911, P. J. Clossick	3,000.00
Apl. 17, 1911, A. Magnani, Administrator	451.00
Apl. 17, 1911, A. Magnani, Administrator	1,998.12
Apl. 17, 1911, A. Magnani, Administrator	1,197.12
Apl. 17, 1911, A. Magnani, Administrator	597.00
Apl. 17, 1911, A. Magnani, Administrator	1,320.58
Apl. 17, 1911, A. Magnani, Administrator	528.10

Exhibits annexed to complaint

May 4, 1911, F. Cardoni	6,000.00
Jan. 1, 1912, Jas. Crump	5,800.00
Feb. 20, 1912, New Jersey Adamant Mfg. Co.	5,000.00
Mar. 1, 1912, Benjamin Hughes	999.00
Aug. 23, 1912, Catherine Haney	9,000.00
Sep. 16, 1912, Peter Scola	2,000.00
Aug. 2, 1912, E. J. Brooks	1,000.00
Aug. 29, 1912, E. J. Brooks	1,000.00
Mar. 7, 1912, Rev. Jos. Hevey (in trust for Dennis Hevey	1,179.00
Aug. 15, 1912, Margaret E. Wole	500.00
Aug. 15, 1912, Helen Marsh or Chauncey Marsh	13,704.60
Aug. 27, 1912, Catherine Haney	10,396.46
Sep. 16, 1912, Peter Scola	3,000.00
Mar. 5, 1912, James Lees & Son	5,000.00
Dec. 12, 1910, E. E. O'Connor	3,000.00
Oct. 14, 1911, Alma M. Mott	6,500.00
	$88,283.78

Exhibit F

Averill, A. F.	$27.02
Birkholz, E. D., Agent,	16.70
Brody, S.	5.44
Bruno, F.	6,096.56
Ford, G. R.	107.37
Ruggerio, Generozzo,	11.95
Golane Special Agency	73.97
Grossman, M.	7.14
Helmbold, R. F.	7.69

Exhibits annexed to complaint

Inter-City Land & Securities Co.	687.58
KaDix Newark Motor Truck Co.	94.38
Katzman, Isaac	394.05
Feniello, Harry	14.52
Lubs, J. H.	68.76
Maier, C. J.	86.59
Miele & Bruno	51.29
Morel, C. A.	104.03
McCabe & Hansen	172.90
McCreery & Co.	1.36
Newell, D. C.	940.17
Owens, R. W.	2.33
Paul, W. C.	413.19
Prout, Wm.	31.55
Simmons Publishing Company	197.71
Spaulding, M. M.	247.74
Stonaker, E. H.	1.87
Valente, J.	34.72
Virgil, N. & Son	88.69
Vito, A.	15.37
Fusco, J. J.	758.73
John Halsey ,Trustee,	6.02
J. Harrigan	3.14
Mary E. Tobin	3.62
Minnie Saunders	7.75
Albert Herman	12.00
Doretta Michelson	15.00
Mrs. Ellen Ellis	15.00
Garrabrant or Thielman	10.00
Mrs. George Patton	8.85
H. S. Mead	7.95
Jennie Darling	35.27
	$10,867.70

Exhibit G

Following are the Dates, Checks of, to the Order of Whom, and Amounts:

Oct. 3, 1911, John B. Scarlett, John B. Scarlett,	$650.00
Oct. 23, 1911, John B. Scarlett, John B. Scarlett,	650.00
Mar. 21, 1912, John B. Scarlett, John B. Scarlett,	150.00
July 23, 1912, John B. Scarlett, John B. Scarlett,	500.00
Sep. 13, 19—, John Scarlett, H. J. Stanley, Tax Collector,	1,247.76
Dec. 20, 1912, John B. Scarlett, Cash,	500.00
Jan. 21, 1913, John B. Scarlett, Clinton Hill B. & L. Association,	82.00
Jan. 21, 1913, John B. Scarlett, Knights of Pythias B. & L. Association	26.00
Jan. 29, 1913, John B. Scarlett, Lehigh Valley R. R. Co.	89.95
Jan. 29, 1913, John B. Scarlett, Thomas A. Webb Co.	50.00
Feb. 13, 1913, John B. Scarlett, N. R. Sica,	125.00
Feb. 15, 1913, John B. Scarlett, Lehigh Valley R. R. Co.	86.92
Feb. 19, 1913, John B. Scarlett, John B. Scarlett,	400.00
Feb. 21, 1913, John B. Scarlett, John B. Scarlett,	400.00
Mar. 4, 1913, John B. Scarlett, John B. Scarlett,	500.00
Mar. 11, 1913, John B. Scarlett, John B. Scarlett,	100.00
Mar. 13, 1913, John B. Scarlett, John B. Scarlett,	90.00

Exhibits annexed to complaint

Mar. 17, 1913, John B. Scarlett, John B. Scarlett,	350.00
Mar. 17, 1913, John B. Scarlett, John B. Scarlett,	100.00
Apr. 22, 1913, John B. Scarlett, John B. Scarlett,	300.00
May 19, 1913, John B. Scarlett, Clinton Hill B. & L. Association,	175.00
.....John B. Scarlett, John B. Scarlett,	300.00
June 12, 1913, John B. Scarlett, David Goldsmith,	120.00
July 2, 1913, John B. Scarlett, Manning Freeman Co.	1,200.00
July 3, 1913, John B. Scarlett, David Goldsmith,	1,000.00
Total	$9,192.63

Exhibit G (continued)

Name	Total
Intercity Land & Securities Co.	$26,498.13
Jas. J. Frisco	2,148.27
Home Ice & Products Company	14,344.07
William C. Armstrong	35,458.47
J. R. Clair	400.67
H. A. Bellows	1,012.33
F. W. Holbrook,	1,095.00
C. P. Whitman	415.00
John B. Scarlett,	9,192.63
F. Bruno Co.	18,562.34
F. Bruno	1,407.00
A. Miele	1,639.15
L. B. Haag	5,000.00
Total	$117,173.06

Exhibit H

Maker	Date	Endorsement	Amount		Payment or Offset.
W. C. Paul	Apr. 13, 1913	None	600.00		
C. J. Maier	July 15, 1913	.....	75.00		
C. J. Maier	June 17, 1913	.....	90.00		
C. J. Maier	Aug. 8, 1913	.....	300.00		
C. J. Maier	Apr. 28, 1913	.....	300.00		
C. J. Maier	July 7, 1913	Chas. E. Maier ..	2,150.00		
Chas. E. Maier	July 16, 1913	Casper J. Maier .	800.00		116.43
C. J. Maier	July 19, 1913	Casper J. Maier .	250.00		
C. J. Maier	July 28, 1913	Casper J. Maier .	300.00		
Chas. E. Maier	Aug. 6, 1913	Casper J. Maier .	2,600.00		
C. J. Maier	July 7, 1913	Casper J. Maier .	1,500.00		
				8,965.00	
O. W. Richards ...	Apr. 14, 1913	Edw. D. Birkholz	406.00		
J. A. Birkholz	May 9, 1913	Edw. D. Birkholz	700.00		
J. Morgan	June 20, 1913	Edw. D. Birkholz	100.00		
E. D. Birkholz	June 2, 1913	Edw. D. Birkholz	459.00		
E. D. Birkholz	June 3, 1913	Louis G. Eagan .	969.00		
J. A. Birkholz	Aug. 4, 1913	E. D. Birkholz ..	1,785.00		
E. D. Birkholz	Mar. 15, 1913	E. D. Birkholz ..	5,437.44		
				9,856.44	2,892.07
D. Schaeffer	Apr. 14, 1913	I. Katzman	150.00		125.00
Isaac Katzman	May 6, 1913	I. Katzman	918.00		
Isaac Katzman ...	July 4, 1913	I. Katzman	918.00		
Isaac Katzman ...	July 6, 1913	I. Katzman	510.00		
Isaac Katzman	Aug. 9, 1913	I. Katzman	510.00		
				3,006.00	
International Tob. Co.	Apr. 14, 1913	Geo. H. Harman	350.00		
Do	July 17, 1913	Geo. H. Harman	850.00		
Do	Aug. 7, 1913	Geo. H. Harman	1,000.00		
				2,200.00	556.72

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
Int. Tob. Co.	July 18, 1913	H. W. Foster ...	450.00		
Int. Tob. Co.	July 28, 1913	H. W. Foster ...	800.00		
Int. Tob. Co.	Aug. 1, 1913	H. W. Foster ...	450.00		
Int. Tob. Co.	Aug. 6, 1913	H. W. Foster ...	135.00		23.41
Int. Tob. Co.	Aug. 7, 1913	H. W. Foster ...	150.00		
Int. Tob. Co.	July 23, 1913	.....	600.00		
Int. Tob. Co.	July 26, 1913	Colin E. Ross ..	900.00		
Int. Tob. Co.	Aug. 6, 1913	Colin E. Ross ..	850.00		
Int. Tob. Co.	July 29, 1913	Thos. T. Hutchinson	850.00		
Int. Tob. Co.	Aug. 1, 1913	Thos. T. Hutchinson	850.00		
Int. Tob. Co.	Aug. 11, 1913	Thos. T. Hutchinson	925.00		
Int. Tob. Co.	Aug. 1, 1913	None	975.00		
Int. Tob. Co.	Aug. 7, 1913	Chester Colton ..	950.00		
Int. Tob. Co.	July 23, 1913	Geo. V. Strahan .	875.00		
Int. Tob. Co.	July 29, 1913	Geo. V. Strahan .	850.00		
C. W. Alpaugh	May 14, 1913	Wm. Prout	279.13		
M. Shatford	Aug. 5, 1913	None	271.00		
Wm. Prout	May 15, 1913	.....	913.50		473.92
			———	12,273.63	
Wm. Schwarzkopf ..	Apr. 16, 1913	.....	600.00		
Wm. Schwarzkopf ..	June 14, 1913	.....	1,000.00		
Wm. Schwarzkopf ..	June 17, 1913	.....	500.00		
Wm. Schwartzkopf ..	July 8, 1913	.....	1,500.00		
Wm. Schwarzkopf ..	July 30, 1913	.....	500.00		
			———	4,100.00	1,178.30
G. W. Worth	July 16, 1913	.....	1,000.00		
M. G. Collins	Mar. 1, 1913	F. W. Holbrook .	541.22		
F. W. Holbrook	Apr. 16, 1913	M. G. Collins	270.61		5.75
T. D. Virgil	June 17, 1913	.....	185.00		
W. E. Maguire	July 16, 1913	R. E. Maguire ..	120.00		

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
W. E. Maguire	June 28, 1913	R. E. Maguire ..	30.00		
C. L. Colton	Apr. 17, 1913	H. W. Foster ...	2,283.75		422.83
				20,824.21	
A. H. Landeker ...	June 18, 1913	M. Natanson	500.00		
A. H. Landeker ...	June 14, 1913	M. Natanson	500.00		
Stevenson Rye & Co.	May 19, 1913	J. B. Scarlett ...	1,100.00		
J. B. Scarlett	Sept. 3, 1910	.....	10,000.00		1.30
				12,100.00	
N. R. Sica	Feb. 20, 1913	J. H. Long	2,537.50		
Rev. J. Zuccarelli ..	Feb. 13, 1913	N. R. Sica	750.00		
Rev. J. Zuccarelli ..	Feb. 13, 1913	N. R. Sica	500.00		
A. Spinosa	May 12, 1913	N. R. Sica	1,247.76		
				5,035.26	1,887.68
Elmira M. Taylor .	May 19, 1913	A. J. Autis	30.00		2.00
Robt. Spear	May 21, 1913	T. Ward & Co. ..	75.00		
Robt. Spear	July 11, 1913	T. Ward & Co. ..	140.00		
Robt. Spear	Aug. 12, 1913	T. Ward & Co. ..	150.00		
D. C. Newell	July 23, 1913	None	289.00		
M. Shatford	July 28, 1913	D. C. Newell	475.00		
M. Shatford	July 1, 1913	D. C. Newell	1,000.00		
M. Shatford	July 3, 1913	D. C. Newell	1,500.00		
D. C. Newell	July 9, 1913	.....	2,800.00		
M. Shatford	July 14, 1913	D. C. Newell	1,500.00		
M. Shatford	July 17, 1913	D. C. Newell	1,000.00		
D. C. Newell	July 17, 1913	W. C. Armstrong	766.00		
M. Shatford	July 22, 1913	D. C. Newell	100.00		
M. Shatford	Aug. 2, 1913	D. C. Newell	242.00		
				10,067.00	
F. J. Gallagher	Apr. 23, 1913	Fisk's Rl. Est. Exch. and F. N. Fisk	200.00		
G. A. Taetzch, Jr. .	May 12, 1913	Fisk's Rl. Est. Exch. and F. N, Fisk	400.00		

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
S. E. Roush	July 27, 1913	Fisk's Rl. Est. Exch. and F. N. Fisk	200.00		
S. E. Roush	July 14, 1913	Fisk's Rl. Est. Exch. and F. N. Fisk	300.00		
O. A. Gifford	July 25, 1913	Fisk's Rl. Est. Exch. and F. N. Fisk	555.00		
Fisk's Rl Est. Exchng	July 18, 1913	F. N. Fisk	1,000.00		
Fisk's Rl. Est. Exchng	July 18, 1913	F. N. Fisk	1,000.00		
Gwynn & Richardson	Aug. 7, 1913	Fisk's Exch. and F. N. Fisk	275.00		
Fisk's Real Estate Exchng.	July 14, 1913	Fisk's Exch. and F. N. Fisk	300.00		
				4,230.00	1,130.00
Edw. P. O'Neill	May 24, 1913	Foote-Ehrbar-Wilcox Co.	507.50		
Rotti & Co.	Aug. 6, 1913	Foote-Ehrbar-Wilcox Co.	150.00		
McLaughlin-Bushnell Co	July 11, 1913	Foote-Ehrbar-Wilcox Co.	200.00		
Rotti & Co.	Aug. 6, 1913	Foote-Ehrbar-Wilcox Co.	150.00		
Stanley Golliek Co.	Aug. 1, 1913	Foote-Ehrbar-Wilcox Co.	253.75		
E. P. O'Neill	Aug. 6. 1913	Foote-Ehrbar-Wilcox Co.	350.00		
H. L. Shiffer	May 24, 1913	M. M. Spaulding	2,500.00		
H. L. Shiffer	June 3, 1913	M. M. Spaulding	1,700.00		
H. L. Shiffer	May 13, 1913	M. M. Spaulding	2,500.00		

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
N. P. Walton, Jr. ..	Apr. 24, 1913	A. H. Corneier ..	250.00		
N. P. Walton, Jr. ..	May 12, 1913	.....	150.00		3.00
Inter-City Land & Securities Co.	Apr. 25, 1913	C. P. Whitman ..	6,000.00		
Inter-City Land & Securities Co.	May 15, 1913	C. P. Whitman ..	2,500.00		
C. L. Averill	May 27, 1913	A. F. Averill	245.00		
C. L. Averill	July 1, 1913	A. F. Averill	60.00		
Atherly, T. A.	May 26, 1913	Marg. Cadmus ..	450.00		42.21
Atherly, T. A.	July 24, 1913	None	300.00		
Aspell, Gertrude ..	Apr. 26, 1913	J. W. Aspell	75.00		3.63
Aspell, Gertrude ..	May 27, 1913	J. W. Aspell	380.00		
Aspell, Gertrude ..	June 24, 1913	J. W. Aspell	115.00		
Aspell, Gertrude ..	July 17, 1913	J. W. Aspell	235.85		
O. R. Collins	July 24, 1913	J. W. Aspell and G. Aspell	200.00		
				19,271.60	
G. S. Aspell	July 29, 1913	J. W. Aspell	350.00		
G. S. Aspell	July 29, 1913	J. W. Aspell	450.00		
G. S. Aspell	Aug. 1, 1913	J. W. Aspell	800.00		
G. S. Aspell	Aug. 8, 1913	J. W. Aspell	300.00		
J. H. Lubs	May 27, 1913	C. A. Walter	115.00		
A. Torcella	May 27, 1913	E. U. Danenhower	110.49		
Funger, R. A. & Mary C.	July 28, 1913	.....	3,400.00		
R. A. & M. C. Funger	July 28, 1913	None	9,100.00		
R. A. & M. C. Funger	July 28, 1913	None	2,300.00		49.80
P. Amend Sons ...	June 30, 1913	M. E. A. Moncur	375.00		
P. Amend Sons ...	July 5, 1913	M. E. A. Moncur	2,700.00		
P. Amend Sons ...	July 17, 1913	M. E. A. Moncur	100.00		

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
P. Amend Sons ...	July 17, 1913	M. E. A. Moncur	1,200.00		
P. Amend Sons ...		M. E. A. Moncur	700.00		
David Katz	Aug. 5, 1913	D. Livingston ...	275.00		
				22,275.49	
Orange Bldg. & Const. Co., Inc.	Apr. 30, 1913	San Giacoma Co., T. S. San Giacoma	550.00		
T. S. San Giacoma	June 17, 1913	San Giacoma Co., M. Loprete ...	795.00		
Robt. Lea	Apr. 12, 1913	T. S. San Giacoma	290.00		
				1,635.00	25.00
N. Virgil & Sons ..	July 30, 1913	L. J. & T. D. Virgil	529.00		
Geo. H. Jacobs	Aug. 1, 1913	.....	1,005.00		51.39
Geo. H. Jacobs	3/10/12	Col. no value ...	3,000.00		
Golane Sp. Agency	June 5, 1913	E. S. Lancaster .	120.00		
Golane Spec. Agency	July 2, 1913	E. S. Lancaster .	80.00		
Golane Spec. Agency	Aug. 1, 1913	E. S. Lancaster .	90.00		
G. R. Ford	May 6, 1913	D. Livingston ...	425.00		
G. R. Ford	June 4, 1913	D. Livingston ...	250.00		
W. D. Lesser	July 7, 1913	.....	50.00		
W. C. Paul, Trus. .	Aug. 9, 1913	.....	75.00		
Natl. Label & Ticket Co.	May 9, 1913	J. R. Clair	700.00		
				6,324.00	
J. R. Clair	June 2, 1913	.....	1,050.00		
J. R. Clair	June 11, 1913	.....	500.00		
Natl. L. & T. Co. ..	July 18, 1913	Clair, J. R.	2,400.00		
J. R. Clair	July 28, 1913	Clair, J. R.	500.00		
Natl. L. & T. Co. ..	July 17, 1913	Clair, J. R.	900.00		
Wm. H. Butcher ..	May 10, 1913	Thos. G. Harper	150.00		43.87

Exhibits annexed to complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
Frank Bruno	July 10, 1913	A. Miele	6,282.88		
Frank Bruno	July 10, 1913	A. Miele	9,650.00		
F. Bruno	July 13, 1913	A. Miele	8,628.00		
Geo. E. Bell	June 13, 1913	Cath. E. Bell ...	275.00		112.49
Hallock & Moore ..	July 16, 1913	A. E. Hartcorn, F. F. Moore ..	555.50		
S. Goldberg	May 26, 1913	D. Livingston ...	494.18		
W. A. Havens	May 29, 1913	.....	2,500.00		
Frieda A. Jensen ..	Aug. 9, 1913	Jacob V. Jensen .	50.00		
Peter Webber	June 9, 1913	.....	5,000.94		56.00
M. J. & J. Federici .	May 12, 1913	.....	775.00		14.64
A. Gasparrini	July 10, 1913	J. Federici	1,700.00		
R. Zanillo	July 14, 1913	F. Gasparrini ..	65.00		2.00
R. Generozzi	July 16, 1913	Giuseppe & Carlino Cusano	150.00		
H. Colton	July 17, 1913	Mike Grossman .	85.00		
Mike Grossman ...	July 21, 1913	.....	400.00		
Wm. McConnell ...	June 25, 1913	C. P. Whitman ..	325.00		53.25
Wm. McConnell ...	Dec. 26, 1913	C. P. Whitman ..	350.00		
				42,816.50	
The Ingersoll Co. .	June 16, 1913	W. H. Ingersoll .	1,060.00		
N. H. Ingersoll	June 18, 1913	Alpha Alcohol Utensil & Mfg. Co.	1,050.00		
H. B. Ingersoll	July 31, 1911	None	800.00		
The Ingersoll Co. ..	Feb. 23, 1912	None	700.00		
				3,610.00	1,346.71
J. H. Simmons Pub. Co.	Nov. 30, 1912	M. M. Spaulding & Shiffer	270.00		
J. H. Simmons Pub. Co.	Dec. 30, 1912	M. M. Spaulding & Shiffer	270.00		
J. H. Simmons Pub. Co.	Dec. 23, 1912	Assigned accts. .	996.15		
				1,536.15	835.67

Exhibits Annexed to Complaint

Maker	Date	Endorsement	Amount		Payment or Offset.
W. E Kitchell	Jan. 30, 1913	.....	325.00		
McCabe & Hansen .	June 13, 1913	.....	595.54		365.50
Liria Cito & Alfred Cito	Apr. 28, 1913	I. Shoenthal	75.00		
A. Fabino	Feb. 3, 1913	A. Vito	350.00		
A. Fabino	Apr. 7, 1913	F. S. Fabino	175.00		2.05
E. N. Howell	May 7, 1913	.....	150.00		1.13
E. N. Howell	Apr. 15, 1913	.....	100.00		
Radium Steel Co. ..	Apr. 7, 1913	E. R. Davis	195.00		1.79
R. W. Owens	Feb. 7, 1913	A. W. Frye	125.00		
F. A. Sacchetti	Mar. 6, 1913	None	65.00		
Kadix Newark Motor Trck. Co.	Apr. 4, 1913	.....	450.00		
C. A. Parker	Dec. 19, 1913	.....	1,248.00		
Jos. A. Valente, Maria L. Valente	Dec. 18, 1913	.....	2,119.57		
D. C. Keating	Feb. 6, 1913	.....	372.12		
Jane A. Curtis	May 20, 1913	L. H. Mory	2,290.00		
Anna Merz	June 11, 1913	.....	400.00		8.00
Wm. C. Cooper	Apr. 9, 1913	.....	228.38		03
J. Williams	May 8, 1913	W. C. Cooper ...	101.50		
W. C. Marley	May 8, 1913	W. C. Cooper ...	76.13		
S. Brody	July 31, 1913	L. Brody	650.00		
Walter D. Gregory.	July 28, 1913	Mrs. R. W. Gregory	395.00		15.51
J. H. Thompson, Jr.	Apr. 27, 1913	A. F. Averill ..	125.00		
Wm. C. Cooper	May 8, 1913	Single	101.50		
Jos. D. Benedetti ..	Nov. 13, 1911	Chas. W. Romme	385.00		
				17,415.74	
				191,268.39	11,849.08
				179,419.31	

Exhibit I

May 14, 1909.

William P. Odell, Esq., President,
The Roseville Trust Company,
Newark, N. J.,

Dear Sir:

The report on the official examination of your Company as of March 11th last, which recently came to hand, shows a condition of affairs which is by no means satisfactory to this Department. The most serious matter is the use by the Treasurer, Mr. Smith, of the Company's funds, without the knowledge of the other officers or directors, for the benefit of one of his friends. The facts are reported to be as follows:

> "On February 6th last Mr. Smith drew a draft on the New York State National Bank of Albany, to the order of Charles A. Nones, for $1,350, which was endorsed by the latter and given by him to one Edward G. Johns, said to be a New York broker, who deposited it to his (Johns') credit in the National Copper Bank of New York. The account of the New York State National was not credited with this draft until a week later, February 13th, when two checks were drawn on the Philadelphia National Bank, of Philadelphia, one for $1,350 and the other for $1,000. The account of the New York State National was then credited with the $1,350, and an additional $1,000 in each was handed to Nones. For neither of these checks, of $1,350 and $1,000 drawn on the Philadelphia National Bank, was there any credit made on the books of

your Company, but the total amount, $2,350 was charged to the Philadelphia National, thus covering the credit of $1,350 to the account of the New York State National and the handing out of the $1,000 in cash, hence at the date of the examination the Company's account with the Philadelphia National showed a shortage of $2,350.

The examination was made on Friday, March 12th, but no word was dropped by Treasurer Smith of this shortage at that time, although he evidently realized that it must come out in the course of the examination. On Sunday, March 14th, Mr. Smith called the Examiner up at his home by telephone, and made arrangements to see the latter the following Tuesday evening, March 16th, when he confessed the whole matter to the Examiner and stated that he had made a similar confession to yourself and Mr. Munroe, a director and attorney of the bank, on the Saturday following the examination. The explanation offered by Mr. Smith was that Nones, a friend of his, had come to him on February 6th, stating that he must have $1,350, and that he (Mr. Smith) had advanced Nones the money in this manner, taking the note of the latter for the amount. As Nones already had in the bank $6,000 of paper, of which only $3,500 was known to any of the directors of the Company, the other $2,500 having been put in by Treasurer Smith without reporting it to the Board or Executive Committee, he (Mr. Smith) therefore did not

put the $1,350 through as a loan, but allowed it to stand without any entry on his books, thus making a deficit of $1,350 in the Company's Albany account.

On February 13th, one week later, Nones again came to Mr. Smith and stated that he could not pay the $1,350 as agreed, but that he must have another $1,000, and in order to accomplish this Mr. Smith drew the two drafts above mentioned, for $1,350 and $1,000, on the Company's Philadelphia correspondent (The Philadelphia National Bank), giving Nones the $1,000 in cash, and with the other draft, $1,350, crediting the Albany account, so that all the shortage would be in one account. Mr. Smith then received another note from Nones for the $1,000, which he also failed to put through. This left a shortage in the Philadelphia National Bank account from that date, February 13th, to the date of the examination, of $2,350, which difference showed in the Examiner's reconcilement of the account with the Philadelphia National for the 11th of March, the date of the examination.

The reason for transferring this shortage to the Philadelphia National Bank is apparent when it is stated that the Company has no regular draft book on that Bank (it has such a book in the cases of its other correspondents), only ordinary bank drafts being used for the purpose of drawing on Philadelphia, the stubs not being filled in, hence there were no telltale stubs to show these two transactions.

On April 6th, when the Examiner returned to the Trust Company's office for the purpose of making certain verifications, all the drafts on the various correspondents being then on hand to March 31st, a full comparison of all the paid drafts was made with the stubs of the check books, where there were any such, and with the general cash book, to see the various dates that the credits were made to the banks upon which the drafts were drawn. This led to the discovery that the above transactions with Nones were not the first of the kind, but that similar transactions had occurred in December and January. Another peculiar feature discovered was that where such transactions had been made the stubs of the check books were blank, having neither name, account nor date. The Examiner also noted that those checks all found their way to the above mentioned Edward G. Johns, said to be a broker.

No mention was made by Treasurer Smith of these earlier transactions to either the officers of the Company or to the Examiner, and when his attention was called to the same he admitted the fact and said that previously Nones had always made good, while this last time he had not.''

Taking the various matters together they seem to disprove the statement of Treasurer Smith that he had no interest in any of the transactions and that they were all made out of friendship for Nones. But be this as it may, no sufficient excuse can be offered by Mr. Smith for his action, which

seems indefensible and deserving of the strongest condemnation. No confidence can be placed by this Department in any official who would be guilty of this sort of thing, nor does he seem worthy of the confidence of the directors of the institution. He should be required to resign and cease his connection with the Company. The Examiner states that the matter is known only to yourself and directors Foster and Munroe, and that at the interview he had with you and Director Munroe, at your home, on the evening of March 18th, the matter was thoroughly gone over and that he informed you and Director Munroe that the facts must be made known to every director, which I assume has been done.

The Examiner further reported that the Nones loans of $6,000, as well as the $2,350 items, above. were taken out of the institution on March 18th, payment being made in cash.

The Examiner calls attention to the fact that when he inspected the draft books he found that the stubs in many cases had not been filled out when the drafts were drawn, that in one case, the National Shawmut Bank, there were five or six missing drafts, the stubs being blank, and that for one of the drafts, No. 20, Treasurer Smith, when he was asked to produce it, said that he had torn up the draft which seems peculiar to say the least. Draft #1 on the New York State National Bank of Albany, stub dated February 15th and reading "Yourselves," for $5,000, could not be found. This account reconciled, however, as the Examiner states, both at the date of the examination, March 11th, and at the close of business on March 31st. In several instances it was found that

drafts had been drawn and sent away, yet no credit had been given in the accounts of the institutions for a day or so thereafter. This also applies to the Treasurer's checks, which when issued are liabilities of the Company and should be at once credited (when issued) to Treasurer's check account, and the corresponding charge made. The latter has not been done as was shown by the $2,168.24 of Treasurer's checks outstanding which did not appear on the books as liabilities at the date of the examination and the largest check, being for $1,997, was dated March 4th, eight days previous to the examination. The practice must be discontinued.

On February 5th last the Treasurer sent $2,500 to the Mutual Trust Company for deposit. In January he had some $1,625 of unsecured loans there, beside other loans which the Mutual Trust Company has put in the Bernardsville National Bank for him, and on February 5th he obtained a loan at the Mutual Trust Company of $2,000, on the endorsement of Mr. George E. Krug, which seems to make evident why the deposit of $2,500 was made. I note the statement of the Examiner that the account was ordered closed by the President (yourself) on March 19th and that the $2,500 has since been withdrawn, which is approved.

At date of examination your Company owned some 255 shares of the stock of the American Commercial Bank, this being over one-half of the total capital of that institution, and it appears that the shares were taken on November 16th last, which permitted the opening of the Bank for business on November 19th. I understand that the Company has since disposed of some of this stock,

which please confirm and state the particulars. I do not regard it as wise or desirable that your Company should hold such a large proportion of the stock of this or any other banking institution, and if its holdings had not been very materially reduced, this should be done without further delay.

I also disapprove of the reciprocal deposit account of the two institutions. At date of examination your Company had some $10,872.87 due from, and $5,019.95 due to, said Bank. The account should be closed out, and the Company's surplus funds kept on deposit with its legal reserve agents.

It is noted by the report of examination that the shares of the American Commercial Bank were not originally taken in the name of the Trust Company, but in the names of individuals, the Company not then being authorized to begin business; that at a meeting of the Executive Committee, held December 8th, the purchase of 260 shares of the stock was authorized; that the latter was not taken on the Company's books at that time because if it had been this would have necessitated showing it in the Company's report for December 31st, hence it was disposed of as follows (this, as the Examiner says, is Treasurer Smith's statement and only confirms his, the Examiner's view); 155 shares (5 having been withdrawn) were hypothecated at the Essex County National Bank for a loan of $15,708.15, on the note of Directors J. B. Bannister, Bataille, Foster, Woodward, Smith and Munroe; 100 shares were hypothecated at the Union National Bank for a loan of $10,043.05 on the note of Direc-

tors J. B. Bannister, Foster, Woodward, Ingersoll, Munroe and Smith; that these notes were allowed to run until February 15th when they were paid, with 5% and 6% interest to that date, by the Treasurer's drawing a Treasurer's check for $15,786.69 to pay the Essex County National Bank and a draft on the Company's New York correspondent for $10,086.10 to pay the Union National Bank; that the check and draft which, as stated, were drawn on the 15th of February, were not credited to the respective accounts and the charge put through to both accounts until February 18th, three days later. The paying of the interest on these individual loans, secured by said stock, shows that the intended ownership was in the Trust Company and that the reason it was not openly carried on its books (instead of paying 5% and 6% interest on the loans) was that it would not appear on the Company's books at the end of the year when a report was required. This deception is certainly not creditable to those concerned.

No written applications were on file for loans to directors of the Company, although the minutes indicated that such loans had had the approval of the Executive Committee before they were made. Section 15 of the Trust Company Law expressly requires such written applications, and no further loans to directors, etc. should be made unless they are furnished.

The papers pertaining to the mortgages owned were incomplete, as follows:

#1, Scott, $3,000, no certificate of valuation.

#2, Cooper, $2,800, no valuation nor abstract of title, and the attorney's certificate showing title

only since 1904, was one day short of the date of record of the mortgage.

#3. Mott, $2,800, no valuation nor abstract of title, and the attorney's certificate one day short of the date of record of the mortgage.

#4. Mott, $3,000, same as #3.

#5. Mott, $2,750, same as #3.

#6. Mott, $2,750, same as #3.

#7. Mott, $2,800, same as #3.

#8. Naylor, $3,300, no valuation nor abstract of title, and attorney's certificate not dated.

#9. Harper, $4,000, no valuation nor abstract, and no insurance policy.

With every mortgage there should be an abstract of title as well as an attorney's certificate and a certificate of valuation of the premises mortgaged, as otherwise an Examiner cannot know whether the mortgagor had good title and whether the mortgage is a first lien or not, nor whether the value is sufficient to cover the loan unless he should have the records searched and obtain independent appraisals of the properties. All of the above defects should be corrected and missing papers supplied, otherwise searches and appraisals will have to be secured by the Department and the expense charged to the institution, which would add very materially to the cost of the examination. All abstracts and attorney's certificates should be brought down to the date of the record of and show the mortgage to the Company.

The foregoing also applies to mortgages held as

collateral, of which there were three at the date of the examination, which were not accompanied by abstracts of title or attorney's certificates or certificates of valuation.

It is recommended that the surety bonds of the officers and employees be kept with the securities owned, under restricted access, instead of being in charge of any one of the obligors.

A book for transferring the shares of the Company's capital stock should be obtained and used, and legal transfers made for all the stock so far transferred.

In proving the stock ledger it was found that all the stock had been practically issued, although there were still outstanding the interim receipts for sixty shares, and no bonds and indemnity were on file. This seems to constitute an over-issue of stock to that extent, and the matter must have attention and correction at once.

On December 31st last the Company owed four months' rent for its office building, amounting to $400, but its report for that date shows no charge on that account, the word "None" being written opposite the words "Rent accrued." Greater care must be exercised to have such reports entirely correct in every particular.

The Examiner reported that there is an agitation on the part of some of the Directors to advertise and pay four per cent interest on all time deposits. This would be an increase over the present high rate of four per cent on the first $1,000 and three and one-half per cent on the balance, now paid by Newark institutions, and I strongly advise against taking this course, which I think would be a very unwise move on the part of any

institution in the locality, and especially so for a new one.

The Examiner's summary of condition at the end of the report shows a net reduction of $6,-541.68 in the undivided profits and surplus fund, making the total $44,499.97. The account of furniture and fixtures, then carried at $8,149.25 is reduced to $6,782. To the $8,149.25 at which the items were carried at date of examination are added Treasurer's check No. 233 for $1,997, representing a final payment to the Veit Manufacturing Company, and check No. 254 for $150, representing a payment to S. W. Gordon & Co., for heating, etc., making a total of $10,296.54, from which is deducted $3,514.25, consisting of $3,000 for improvements put upon the building (which expense is not a proper part of furniture and fixtures account), $182,25 paid Gordon & Co., for plumbing, $150 paid Butterfield on account of steam-heating, and $32.00 paid Hedden Construction Company for iron door, also Treasurer's check No. 254 for $150, not credited to Treasurer's check account, and representing an additional amount paid S. W. Gordon & Co., for heating, etc. The liabilities are increased by accrued rent, $633.33, accrued salaries, $133.61, interest accrued on deposits, $351.39, accepted bill of G. R. Munroe for services in organizing Company, $1,000, and amount due Adarns, Groesback & Maher, balance account of stationery, printing, etc., carried as a note, $554.96. The last mentioned item should have been charged to expense and not carried as an asset. The $1,000 bill of the Attorney, Mr. G. R. Munroe, for organization expenses, has been voted paid by the Board, as per the minutes of March 17th, *viz:*

"It was mentioned by Mr. Ingersoll, seconded by Mr. Woodward, that a bill of G. R. Munroe, for $1,000, for services rendered in connection with the promotion and organization of the Roseville Trust Company, be paid, same to include the various expenses that were incurred. The motion was carried by unanimous vote."

It is recommended that no new loans be granted to Director Bataille.

The statement of Director Lurich shows equities of some $26,000, but does not state his outstanding liabilities other than encumbrances on real estate, and a supplementary statement showing all his liabilities, both absolute and contingent, should be called for. The loans on paper bearing his name were evidently obtained, as the Examiner states, for a speculative real estate venture and so far as the security goes are practically single-name paper. Directors who borrow the Company's funds for speculative purposes are under obligation to secure the institution beyond question, for the advances, by responsible endorsements or pledge of good marketable collateral for the same, and if they are not in a position to furnish that character of security the loans should not be made. Another important thing to be taken into consideration is the extent of loans to the parties by other institutions, as to which full information should be demanded.

At date of examination the notes bearing the name of Mr. Henry W. Smith aggregated some $10,500, as security for which he had pledged collateral reported as having a market value of $11,950. Since the examination, however, he put in

another note, for $1,500, endorsed by him and made by William P. Smith. Mr. Smith is reported to have large liabilities elsewhere and it does not seem prudent for your Company to make further advances to him unless the notes are covered by collateral or bear the endorsements of entirely responsible persons.

The Examiner characterizes the following other notes as not very desirable nad considers it advisable that they should be required to be paid when due, *viz:* Underwood, $2,500; Ingalls, $2,-500; Fresnal Mines Company, $9,000; Pike Adding Machine Company, $4,210.

In making loans on collateral the provision of the law that the security shall have an actual market value of not less than 10% in excess of the amount of the loan, should be carefully kept in mind. The Cogswell & Boulter Company's stock and Welch Grape Juice Company's preferred stock, held as collateral for a $3,060 loan to George H. Jacobs and a $1,500 loan to Frederick H. Higby, respectively, may have intrinsic value, but appear to lack the element of actual market value, and therefore they are not the kind of collateral security contemplated and required by the law.

I desire you to submit this letter to every director of the Company, and advise me fully, in writing, of the action taken upon its contents. The letter should be signed by yourself and all of the other directors of the institution.

Yours truly,

VIVIAN M. LEWIS,
Commissioner.

Exhibits annexed to complaint

(Letterhead of

ROSEVILLE TRUST COMPANY,

Newark, New Jersey.)

May 17th, 1909.

Vivian M. Lewis, Esq., Commissioner,
Department of Banking and Insurance,
Trenton, N. J.

Dear Sir:

We beg to acknowledge the receipt of your letter of May 14th. And wish to say it will have our careful attention, and will be gone into minutely. It being of so much length, and also the request by you, that I submit it to all of our Directors (there being 20 of them and some residing out of town) may take some time. I would like to say here, that most of your suggestions were attended to, within a short time after your Examiner was here.

I remain,

Yours truly,

WM. P. ODELL,
President.

Exhibits Annexed to Complaint

(Printed Letterhead of Roseville Trust Company
Newark, New Jersey)

June 3d, 1909.

Vivian M. Lewis, Esq., Commissioner,
Department of Banking and Insurance.
Trenton, N. J.

Dear Sir:

To reply in detail to your letter of May 14th, 1909 I would say:

1st. That the matters referring to our Secretary and Treasurer, will be taken up with you verbally, by the Committee appointed by me, under authority of the Executive Committee.

2d. I wish to state, that the Nones indebtedness was paid in full at the time your examiner was here.

3d. I wish to state, that the practice of occasionally leaving blank stubs, where checks or drafts had been destroyed on account of errors, and of failure to post the amounts of checks and drafts on the date of issue, has been discontinued.

4th. I also notice you bring up the matter of the Mutual Trust Company of Orange; which account, as you correctly say, was closed by me on March 19th, and you also call our attention to certain loans, which our Secretary and Treasurer had with and through this Trust Company. For our part we cannot see how it concerns us, where our officers have their personal loans.

5th. In the matter of the ownership of the 255 shares of the American-Commercial Bank stock,

that the view taken by you in the purchase of this stock, is in error. The only basis for your conclusion, is the manner in which payment was made; which payments should have been made direct to the group of gentlemen owning the stock, instead of to the banks carrying the loan for them. Be that as it may, we wish to say, that all of stock has been disposed of at the price of 102 netting us a profit. We would also like to say that, if we had held this stock until today, we could have got from 105 to 110 for the same stock, as this price has been bid for it.

6th. As to the "reciprocal deposit account" with the American Commercial Bank, would say that this account was opened to facilitate exchange of Philadelphia funds. We note you refer to the advisability of closing this account, and depositing with our "legal reserve agent." We consider the American Commercial Bank a good one as a "legal reserve agent." Do you not?

7th. In regard to written applications from directors for loans to themselves, I would say that this rule is now being strictly observed.

8th. As regards the papers on real estate loans, I would say that our Secretary and Treasurer was not aware that the appraisal committee's report should be filed with the papers. As to the attorney's certificates being one day short, would say that his certificate is given when check is drawn by Treasurer and then after the mortgage is recorded, the search is brought down after the recording, and this continuation of the search always appears in his certificate in the abstract of title, which is filed at his first convenience. All of the

papers are now complete in this regard and we will try hereafter to keep our mortgage papers up to date.

9th. The surety bonds and other securities you mention, are now kept intact in the Fidelity Trust Co. vaults, requiring at least two officers to secure admission to them.

10th. In regard to the transfer book, will say that this was attended to, as were several other matters you refer to, some weeks before your letter was received.

11th. Regarding the failure in some instances to secure the return of receipts for monies paid on account of the company's stock, I would say that we have taken legal advice, in addition to own attorney, and are advised that these receipts, do not, as they are framed, constitute an interim receipt and are therefore not negotiable.

12th. In regard to the items of liability, which you call our attention to, as not being included in the statement of December 31st, we would say that any such omissions were purely inadvertences and not in any sense an attempt to conceal any obligations. All obligations have now been paid in full, except current expenses.

13th. In regard to the summary of conditions of our December report in regard to the expense chargeable against the surplus fund and fixture account, I will say that we think that these suggestions need not now be considered, as we have since purchased the entire building, after a special meeting of the stockholders and a unanimous approval of this course. We would be glad to have

your opinion as to the advisability of carrying on our books, two separate accounts; a real estate account and a fixture account. The latter we hope to wipt out by degrees.

14th. The loans specified to Director Lurich, Henry M. Smith, Underwood, Pike Adding Machine Co., etc., were carefully considered by our executive committee, who have much more data to work upon than your examiner, are all entirely satisfactory. For instance the Pike Adding Machine Co. for their loan of $4,210 had assigned to us bills coming due from such companies as the Pennsylvania R. R., Baltimore and Ohio R. R., City of Ossining, City of Newburgh, County Clerk's office at Albany, etc., amounting to $6,000. We cannot understand how your examiner can class these as undesirable loans. The same applies in our judgment, to the loans on which stock of the Coggswell and Boulter Co. and the Welch Grape Juice Co. were assigned as collateral. The committee satisfied itself that they had a good "market value" in excess of 10 per cent margin.

As to the submission of your letter further, our aforesaid committee will confer with you.

We beg to remain,

Yours very truly,

WM. P. ODELL,
President.
WM. FAIRLIE,
1st Vice President.
H. W. FOSTER,
2d Vice President.

Members of Executive Committee.
Wm. J. Banister
G. Rowland Munroe.

Exhibits Annexed to Complaint

(On Postal Telegraph Blank)

Newark, N. J., June 15/09

To Vivian M. Lewis,
Comr. of Banking & Ins.
Trenton

Our committee will call on you today at twelve forty-five p. m.

ROSEVILLE TRUST CO.

(Printed Letterhead of Roseville Trust Company
Newark, New Jersey)

June 21st, 1909

Vivian M. Lewis, Esq., Commissioner.
Department of Banking and Insurance,
Trenton, N. J.

Dear Sir:

A special meeting of the Board of Directors was called by the President for June 21st, at 7:30 p. m. as per the following notice, sent to each Director by registered delivery as shown by the enclosed Post Office record.

(Notice Sent) There will be a very important meeting of the Board of Directors of this Institution Monday evening, June 21st at 7:30 p. m. It is urgently requested that every member of the Board be present, as a matter of vital importance to the Institution will come up before the Board at this meeting.

Yours very truly,
(Signed) WM. P. ODELL,
President.

P. S. This meeting is called to consider an important communication received by us from the Commissioner of Banking and Insurance.

Those present were Messrs. Odell, Fairlie, Foster, W. J. Bannister, Bataille, Benjamin, Mott, Ingersoll, Kilgus, Krug, Monroe, Lurich, Scarlett, Sexton and Woodward.

The meeting was called to order by President Odell, who called for nominations for secretary pro-tem. Director Elmer K. Sexton was duly elected.

The letter of the Commissioner of Banking and Insurance, dated May 14th, 1909, was duly read as was also the reply letter of President Odell dated June 3d, to the Commisisoner.

The resignation of Secretary-Treasurer Raymond E. Smith was read as follows:

June 18th, 1909.

Mr. Wm. P. Odell, President,
and Members of the Board of Directors
of Roseville Trust Co.

Gentlemen:

I beg to hand you herewith my resignation as Secretary and Treasurer of your Institution.

Yours very truly,
R. E. SMITH (Signed)

The Directors thoroughly discussed the letter of the Commissioner of Banking and Insurance, and decided to have an informal secret ballot taken on the resignation of Secretary-Treasurer Raymond E. Smith.

The result of the ballot was without a dissenting vote against the acceptance of Mr. Smith's resignation as Secretary and Treasurer of the Roseville Trust Company.

A motion was then made by Director Scarlett and seconded by Director Bannister that Raymond E. Smith be retained as Secretary and Treasurer of the Roseville Trust Company.The motion being put it was unanimously carried.

The meeting then adjourned.

E. K. SEXTON,
Sec'y pro-tem.

The undersigned subscribe their signatures as part and parcel of the aforesaid sheets #1 & 2.

Wm. P. Odell
President.
Wm. Fairlie.
1st Vice President.
H. W. Foster
2d Vice President.
Wm. J. Bannister,
Clinton F. McCord.
Harvey Mott.
John B. Scarlett.
E. C. Bataille.
Geo. Edw. Krug.
E. K. Sexton.
Charles C. Lurich.
Wm. F. Keim.
Fred Kilgus.
John S. Boll.
W. W. Woodward.
W. H. Ingersoll.
J. B. Banister.
W. T. Benjamin.

P. S. The reason for the delay in sending this letter is because of many of our Directors being out of town, it being vacation time.

You will notice that Director Monroe's signature is lacking, he having sailed to Europe the day after the meeting was held, June 22. If you wish his signature, we would suggest that you return the letter to us later in September.

WM. P. ODELL,
President.

July 16, 1909.

William P. Odell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

I am in receipt of a letter, dated 21st ultimo and signed by Mr. E. K. Sexton, Secretary pro tem of the special meeting of the Board of Directors of your Company, held on the last mentioned date, embodying the action of the Board upon the resignation of Mr. Raymond E. Smith, Secretary and Treasurer of the institution, which will have my consideration. I will say now, however, that I emphatically disapprove of the decision of the Board in the matter.

Yours truly,

VIVIAN M. LEWIS,
Commisisoner.

Exhibits Annexed to Complaint

Oct. 28, 1909.

William P. Odell, Esq., President,
Roseville Trust Company,
Newark, New Jersey.

Dear Sir:

The report on the official examination of your Company as of the 6th instant came to hand on the 20th.

Section 15 of the Trust Companies Act provides:

> "No trust company shall make any loan to its president, vice-president, treasurer secretary, cashier, or to any of its directors, or any of its clerks, tellers, bookkeepers, agents, servants or other persons in its employ, until the proposition to make such loan, stating the amount, terms and securities, if any, offered therefor, shall have been submitted in writing by the person desiring the same to a meeting of the Board of Directors of such company, or to the Executive committee of such Board, if any, and accepted and approved by a vote of a majority of those present constituting a quorum, etc."

No loan to a director, officer, etc., can legally be made in any other manner than as set forth above; nor can the Board of Directors or Executive Committee delegate their authority to make such loans to the officers. In this connection the Examiner states that in two or three instances loans were granted to directors by the Treasurer prior to their approval by the Board or Executive Committee, and this must be entirely

discontinued for the future. The granting of any such loan must be the act of the Board or Committee while in session, nor is it sufficient that a loan to a director, etc., may have been assented to by members of the Board or Committee in advance of a meeting. Furthermore, the law makes no exception in the case of collateral loans.

Has any examination of the Company's affairs yet been made by the Examining Committee of the Board? At the date of the recent examination the records did not show that there had been any such examination. The Treasurer informed the Examiner that one had been made some two months previous but that the report thereon had not been submitted. Has the report since been received? The statute provides that an examination by the Board or Committee must be made at least once every six months, and this provision must be strictly complied with. All such examinations should be made at dates of which no previous notice or intimation of any kind should be given any official or employee of the institution, as otherwise their value as a check and safeguard is materially lessened.

In the Company's report of condition for the 1st ultimo, two errors were found in listing liabilities of directors. As these reports are sworn to, great care should be exercised to see that they are correct in every particular.

As reported, there is an appraisal committee of three, consisting of Messrs. Fairlie, Mott and Krug, but nearly all of the valuations of properties covered by mortgages owned are signed by Messrs. Fairlie and Smith, only two names, and one of these is not a member of his committee. This should be corrected for the future.

There were no certificates of valuation of the properties covered by mortgages numbers 2, 8 and 9; the abstract of title in the case of number 2 showed a prior lien of $3,250 (corrected during examination), but the attorney's certificate stated that the Company's mortgage was a first lien. In the case of number 8, the attorneys certificate was three days, and the abstract of title two days short of the date of record of the mortgage, and in the case of number 13 the insurance policy was made payable, in three places, to the City Trust Company instead of the Roseville Trust Company, which also was corrected during the examination. It should be made the duty of some officer to go over all the papers pertaining to mortgages owned or held as collateral security and see that they are complete in every respect before being accepted.

The janitor also acts as messenger and is intrusted at times with cash and checks. He should, therefore, be required to give a bond in sufficient amount.

It is noted that the Company has disposed of 235 of the 255 shares of stock of the American Commercial Bank which it owned, and that arrangements have been made to sell the remaining 20. This is approved. The reciprocal accounts between the two institutions are, however, still maintained, as reported. At date of examination your Company owed the American Commercial Bank $3,058.16, and the latter owed the Company $3,065.51, the difference in the balance being but $7.35. There appears to be no necessity for those accounts, and the balance should be withdrawn and placed with the regular reserve agent.

Banking house, furniture and fixtures, are allowed as assets at this time at $50,000, or $4,607.58 less than the book value.

The assignment of the two second mortgages, for $3,000 and $2,500, respectively, held as collateral for the $5,250 loan on a note made by H. J. Bierman, only covers the original note, dated April 15, 1909, for four months, $5,500. A new assignment should be secured covering all renewals.

A good reduction in the Henry W. Smith paper is noted, and this line now seems well covered by the collateral pledged. Various notes previously criticised, such as Underwood, Ingalls, Fresnal Mining Company, also show some reductions, and this process should be required to be continued.

The bonds of the Union Waxed and Parchment Paper Company, pledged by director Woodward as collateral for loans amounting to $7,500, are reported as having a market value of 80=$7,200, or $300 less than the amount of the loan. Mr. Woodward should be called upon to substitute additional collateral in order to bring the loans within the statutory requirement.

Joseph Federici's line, aggregating $9,121.50, while apparently well divided, is considered too large. He is known to have $1,325 of paper in another trust company, and in all probability has liabilities at other institutions. It is advised that the line should either be reduced or fortified by collateral security.

The last sale of preferred stock of the Welch Grape Juice Company is reported to have been at par, and at that figure the $1,500 collateral

loan to Frederick H. Higby is without any margin, and should be required to be adjusted to conform to the statutory rule. The note of James E. Nolan, endorsed by the Chestnut Park Company, for $1,507.50, is regarded as undesirable paper, and it is recommended that the parties be called upon to pay the obligation at maturity. The foregoing also applies to the single name note for $257.55 of George E. Cunningham. The original advance is reported to have been for $250 on March 29th last, and has since been renewed, under which process it has accumulated six months' interest. Cunningham has a loan at the American Commercial Bank of $1,794.02 (single name), which has been accumulating interest in the same manner. In the same category is a $600 note of Oscar A. Helbig endorsed Gordon B. Phillips. Helbig is reported to have $3,351.18 of single name paper at the Mutual Trust Company, of Orange, and Phillips also has $2,580 of paper at the same institution, likewise a note of $500 at the American Commercial Bank. The same recommendation is made with respect to those Helbig-Phillips notes.

Other matters touched upon in the report of examination may be made the subject of a further communication.

I, of course, intend this letter for the information of each director of the Company.

Yours truly,

VIVIAN M. LEWIS,
Commissioner.

J

Exhibits Annexed to Complaint

(Printed Letter Head)

ROSEVILLE TRUST COMPANY

Dec. 14th, 1909.

Hon. Vivian N. Lewis,
Commissioner of Banking and Insurance.

Dear Sir:—

In reply to your letter of Oct. 28th relative to a recent examination held here, I beg to make the following statements:

(1) The matter of Section 15 relating to loans to Directors, Officers, etc., has been carefully looked into, and hereafter all applications for loans to Directors will come before the Committee, and be passed on by them at a regular meeting before the loans or renewals are made.

(2) As to examinations made by the Trust Co. Committee from the Board of Directors, I beg to state that there was such an examination made on May 18th, and since the receipt of your letter, there has been another examination made by the Committee on Nov. 18th, a report of which we have on file, and we have spread both reports upon the minute book.

(3) We note that in the report of condition made out in September, two errors were found in listing liabilities of Directors. We shall exercise great care hereafter in seeing to it, that these items are absolutely correct.

(4) Concerning the Appraisal Committee I beg to state that all the Certificates of Valuation have been properly signed by a majority of that Committee, and the Certificates of Valuation of prop-

erties covered by mortgages numbered 2, 8 and 9 are intact. The abstracts and attorney's Certificates all agree as to date, and the insurance policies, etc., are all correct, and I beg to state further, that at our last Executive meeting, a Committee of three (3) was appointed, whose duty shall be hereafter to go over all bonds and mortgages and all papers pertaining thereto.

(5) We now have on file a Bond of $5,000 for our Janitor of The National Surety Co. of New York.

(6) The reciprocal accounts with the American Commercial Bank have been closed.

(7) A new assignment of the two second mortgages of H. J. Bierman has been asked for, covering all renewals of the original note.

(8) We note that you object to the Union Wax and Parchment Paper Co. bonds, and also the Welch Grape Juice Co. Stock and have communicated with both Mr. Woodward and Mr. Higby, that additional collateral or a reduction on their loans will be necessary and we have their assurance it will receive their attention at an early date.

(9) The Joseph Federici loans, aggregating $9,421.50 have up to the present writing been reduced to $8,275.00 with a promise of further reduction.

(10) The note of James E. Nolan for $1,507.50 and Geo. E. Cunningham for $257.55, and the Helbig-Phillips notes for 600.00 will also have our special attention.

I remain

Yours very truly,

WM. P. O'DELL,

President.

Exhibits Annexed to Complaint

December 16, 1909.

William P. O'Dell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

I have your letter of the 14th instant and note your advices of the action taken upon the matters referred to in mine of October 28th last.

Yours truly,
VIVIAN M. LEWIS,
Commissioner.

June 13, 1910.

William P. O'Dell, Esq., President,
Roseville Trust Company,
Newark, New Jersey.

Dear Sir:

The report on the official examination of your institution as of the 25th ultimo has been received, shows net undivided profits of some $8,632.23 above the surplus fund of $50,000.

The aggregate market value of bonds owned is stated at $117,587.50, or $2,616.35 less than the book value. The past due $257.55 note of George Cunningham is disallowed as an asset, and the $450 of past due notes of the David D. Slaight Hardware Company ($150 and $300), are allowed at 50% equals $225.

Furniture and fixtures, carried at $4,313.52, are disallowed as assets. The bulk of this old account was added to the cost of the building, and is carried as a part of the building account. Only $300 has been charged off the furniture and fixtures ac-

count since the last preceding examination, this amount being the excess of the income from the building over the expenses. At lease $500 should be charged off each six months until the whole "furniture and fixtures" item has been eliminated as an asset.

Loans to the extent of $25,200.06 have been made to four concerns, the Sloan & Chase Manufacturing Company, Ltd., the Storiettes Publishing Company, LaVargne Pump and Machine Company and M. L. Dickerman, on assignments of outstanding accounts. In none of these cases does your company hold any note or other evidence of the debt, other than these duplicate bills, the assignments of which to the institution are not known to the debtors, who remit as usual to the company to whom the account is due, which is trusted to turn over the amount to your company when received. This business is regarded as a poor one from a banking standpoint. It should be safeguarded in every way. There should be a note or notes showing the obligation to the Trust Company, and the debtor should have notice of the assignment and make his payments direct to it.

The line of Miele and Bruno is considered entirely too large. It shows an increase of nearly 100% since last October. This line should be taken in hand and required to be largely reduced or additionally secured by competent collateral. The same recommendation is made in respect to the line of C. A. Morel, amounting to $12,809.45.

Joseph Federici's line shows a reduction of $2,500, which is approved. Further reduction should be insisted upon as a matter of prudence.

One overdraft was found in the account of G. Rowland Munroe, on January 14th last, made good January 17th, three days later. The amount was only $35.82, but in view of the express prohibition of the statute against the allowance of overdrafts to any director, etc., and the further fact that this is made a misdemeanor (a crime), under no circumstance should a director be allowed to overdraw no matter what the amount may be, and explicit instructions should be given to officials and employees to see that no director is permitted to violate the rule.

The keys of the loose leaf ledgers, now in possession of the bookkeeper, should be kept by the treasurer who should also supervise all shifting of the loose leaves.

All posting should be made to the general ledger, and the latter put in proof before the bookkeeper leaves for the night.

As reported, payments of interest on mortgage loans are not credited on the bonds. The mortgagors are entitled to have this done, and it is the proper practice. Hereafter such endorsements should be made on the bonds. The number of mortgage loans to the institution is not so large as to make this burdensome.

The bills purchased are not numbered in any way. The correct practice is to have them numbered in numerical order as they are purchased, which is of great assistance in looking any of the items up, and as a check against substituting other items. It is therefore strongly recommended that the notes be consecutively numbered in the order of their purchase, preferably by a numbering machine.

Exhibits Annexed to Complaint

The reports of the Examining Committee should be more in detail as to the ground covered by the examinations.

Yours truly,

VIVIAN M. LEWIS,
Commissioner.

(Printed Letter Head)

ROSEVILLE TRUST COMPANY

Newark, N. J. June 14, 1910.

Hon. Vivian M. Lewis, Commissioner,
Banking & Insurance,
Trenton, N. J.

Dear Sir:

Your letter of the 13th came to hand this morning, and after going over the contents of same carefully, I beg to make the following statements:

As to the aggregate market value of bonds owned by this Company, we realize that the bond market has been for the past two weeks below normal, and should the present conditions exist for sometime to come, we will make it our business to charge some, if not all, of this depreciation.

As to the past due notes of Cunningham and Slaight Hardware Co. aggregating $727.55, I beg to state that—this was fully explained by our Treasurer to your representative, that it was our intention to charge off these notes on June 30

in case no settlement was made before that time. The same explanation may be applied to our furniture and fixtures now carried at $4,313.52. This matter was talked over with your representative, and our Treasurer explained to him at the time that this entire amount would be wiped out not later than December 31 of this year, and possibly by June 30.

As to the advances made to the Sloan & Chace Mfg. Co., Ltd., Storiettes Publishing Co., the LaVergne Pump & Machine Co. and M. L. Dickerman on assignments of outstanding accounts, I beg to state that the Storiettes Publishing Co. and the LaVergne Pump & Machine Co. assignments are all known to the debtors, who received due notice of the assignment of such bills. The Dickerman bills are paid to me at my office in the City, and all of these accounts being small, and the writer being well acquainted with Mr. Dickerman, we consider it pretty safe banking to take these bills on this basis with a regular assignment. As to the Sloan & Chace Mfg. Co. Ltd., I beg to state that these bills are all "A1" accounts.

The nature of these assignments was discussed by your representative and our Treasurer, and it was the opinion of the former, that we should have a note from the assignor to cover the entire assignment of bills, which has since been done with all new assignments. The assignments are so worded that it would be a crime for any individual or corporation to use funds which represent bills which had already been assigned. I enclose herewith a copy of the last assignment received from the Sloan & Chace Mfg. Co., Ltd. All of these assignments are sworn to before a Notary

Public as to being correct to the best of the Assignor's knowledge and belief. You can readily see from the wording of this assignment, that no reputable concern would dare violate this agreement. If this is not entirely satisfactory to your department, or if you know of a better form we could use, we would be very much pleased to have you suggest the same.

As to the line of credit extended to Miele & Bruno, I beg to state that these loans for the most part are simply temporary, pending settlements from different municipalities, which will practically wipe out the entire loans. As to the line of credit extended to C. A. Morel, I beg to state that we consider Mr. Morel perfectly good for ten times the amount of his loans with us. His last statement showed a net worth of over $160,000 and his entire indebtedness was $47,000. He is a man who never fails in his promises and has always lived up to his agreement with this Company.

As to an over-draft found in Mr. Munroe's account on January 14 of this year amounting to $35.82, I beg to state that this matter was entirely an oversight, and was not known either to the Treasurer or to myself, otherwise the over-draft would never have been allowed, as we are well aware that the statute against over-drafts of Directors is very clear, and in the future I am sure there will never be another over-draft of any Director in our institution.

The keys of the loose leaf ledger, as suggested by your representative, are kept with the Treasurer and the shifting of all leaves in the ledger are supervised by him.

The General Ledger is balanced at night before the bookkeeper leaves the institution. This has been done very night since your representative was here, at his suggestion.

The payment of interest on bonds and mortgages have all been credited on the bonds, as suggested, and this practice will be kept up as payments of interest are made.

In the near future we will adopt a system of numbering our bills purchased as suggested.

The suggestion, as pointed out by your representative was given to Chairman of the Examining Committee, and all future reports of such committee will be more in detail, as suggested by you.

Yours very truly,
WM. P. O'DELL,
President.

COPY

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Sloan & Chace Mfg. Co. Ltd., a corporation organized and existing under and by virtue of the laws of the state of New Jersey in consideration of the sum of to it in hand paid, on the 13th day of June, 1910, by the Roseville Trust Co., the receipt of which is hereby acknowledged, to secure the repayment thereof in accordance with the tenor and effect of its promissory note of this day, has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto the said Roseville Trust Co., the following accounts:

Exhibits Annexed to Complaint

June 13, 1910	E. A. Kinsey Co.,	$1,238.57	
" " "	Western Electric Co.	450.00	
" " "	International Time R Co.	70.00	
Apr. 28, "	American Oil & Supply Co.	22.00	
" 14, "	Edison Phonograph Co.	60.00	
May 14, "	Elliott-Fisher Co.	29.75	10
June 10, "	Granulator Soap Co.	234.34	
" " "	H. G. Lefort	56.45	
" 1, "	Wilhelm Telephone Mfg. Co.	58.00	
" " "	General Electric Co.	1,280.78	
		$3,631.87	

And the said Sloan & Chace Mfg. Co. Ltd. hereby grants to the Roseville Trust Co., full authority to ask for, demand and collect the said money 20 or moneys payable by the said parties above mentioned on such dates as they may become due, and to do any and all things in connection herewith which the undersigned could do had this assignment not been made, and each payment received from the said parties above mentioned shall be turned over to the said Roseville Trust Company, by the said Sloan & Chace Mfg. Co. Ltd., and the said Roseville Trust Company shall apply the same to the liquidation of the hereinbefore men- 30 tioned $3,631.87, and we hereby bind ourselves to immediately pay over and deliver the money or moneys received from the said parties above mentioned to the said Roseville Trust Co.

IN WITNESS WHEREOF, the said Company caused its corporate seal and title to be affixed 40 this 13th day of June, 1910.

SLOAN & CHACE MFG. CO. LTD.

Chas. A. Haney,
V. Pres.

H. B. Annin,
Treas.

Exhibits Annexed to Complaint

June 18, 1910.

William P. O'Dell, Esq., Presidnt,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

I have your letter of the 14th instant in reply to mine of the 13th in reference to the last official examination of your Company, and note its contents with appreciation. Of course, you have submitted my letter to the other directors of the institution.

Yours truly,

VIVIAN M. LEWIS,
Commissioner.

(Printed Letter Head)

ROSEVILLE TRUST COMPANY

Newark, N. J., Nov. 3, 1910.

Hon. Vivian M. Lewis, Commissioner,
Banking & Insurance,
Trenton, N. J.

Dear Sir:

At a recent meeting of our Directors, we decided to wipe out our fixture account, entirely, at the close of business October 31. This makes a total of $4,313.52 that has been charged off this year, which represents our total fixture account.

We are now carrying our banking house as $50,000 which we consider a very conservative figure, as not less than two months ago the corner property opposite ours sold for $52,500, which

property we do not consider for a minute equal in value to our own. The building itself is inferior to ours, and we also consider our own corner more desirable for business purposes.

Trusting our actions will meet with your approval, I remain,

Yours very truly,

R. E. SMITH,
Sec. & Treas.

November 4, 1910.

Raymond E. Smith, Esq., Treasurer,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

I have your letter of the 3d instant and note your advices that the $4,313.52 fixtures account carried by your Company has been entirely wiped out. This has my approval.

Your further advices that the banking house is now being carried at $50,000, and that the corner property opposite the same was sold within two months for $52,500 are likewise noted.

Yours truly,

VIVIAN M. LEWIS,
Commissioner.

Exhibits Annexed to Complaint

October 28, 1912.

William P. Odell, Esq., President,
Roseville Trust Company,
Newark, New Jersey.

Dear Sir:

The report on the official examination of your Company as of the 14th instant has now come to hand. The "past due" paper at the date of examination aggregated some $27,940.43, which is an interesting exhibit. Included in the list were the following items which are disallowed as assets by the Examiner, *viz.*,

Ferguson Contracting Co., endorsed F. M. Ferguson	$2,500.	
Independent Steel & Wire Co. end. Ferguson Contracting Co. and others	2,420.50	
M. Ettlinger & Co., end. A. L. Canfield and another	1,520.75	(2 notes
American Concrete Co., endorsed A. L. Canfield	1,500.	
Edgar Klein, endorsed A. L. Canfield	2,150.	(2 notes
Beach Lumber Co., endorsed A. L. Canfield	750.	
F. Ehrlich & Son, endorsed European-American Bank	300.	
Charles W. Romine, endorsed various	896.52	(5 notes
Various, endorsed Charles W. Romine	810.	(3 notes
Storiettes Publishing Co., endorsed Robert Rae	1,017.	

Exhibits Annexed to Complaint

Jane A. Curtis, endorsed L. H.
Morey, 2,290.
Thomas G. Turner, endorsed.
Charles W. Haberle 400.

The Ferguson Contracting Company and the Independent Steel and Wire Company are both reported to be defunct and that F. M. Ferguson is dead. The items on which appears the name of the Ferguson Contracting Company, except for its benefit, are considered of no value. The institution has obtained a judgment against William A. Hirsch, who appears as an endorser on one of the notes, $2,420.50. Hirsch is said to live in Chicago and to be wealthy, but that he has succeeded thus far in evading levy and execution.

All past due notes bearing the name of A. L. Canfield are disallowed. It appears that he has gone into bankruptcy, and that since that time there has been material evidence that his methods (to use the Examiner's own language) "were not on a much higher plane than those of the ordinary crook."

Charles W. Romine whose name appears on eight of the past due items, is reported to be dead; that there has been some attempt made to show that his estate will pay 75% of his indebtedness, and that the other names on the paper will be good for the balance. The Examiner states, however, that it has come to light since his death, as he is informed, that he was in the habit of writing all the names on the notes himself, in other words, committing forgery, and that there are said to be notes of this character in various banks, aggregating some $40,000. It is, therefore, regard-

ed as advisable that all items showing the name of Charles W. Romine either as maker or endorser, should be disallowed, until the executors of the estate have had full opportunity to determine what notes may be justly repudiated by the other persons whose names appear thereon.

There are two past due notes of the Storiette Publishing Company, for $943.55 and $1,017 respectively, both endorsed by Robert Rae, who, as reported, is the Storiette Publishing Company, and the similar one also bears the endorsement of George F. McConnell. The Examiner says that it is conceded there is practically nothing back of Rae or his publishing company, but that McConnell is said to be good. The $1,017 note, not endorsed by the latter, is disallowed.

The name of Jane A. Curtis appears on a past due note for $2,290, endorsed by L. H. Morey. She is reported to be a married woman, and an accommodation maker of the note. The amount of the item was originally $2,500 and the reduction of $210 has been made by her. It seems very questionable, however, whether further payments could be enforced as against her, if she should decide to discontinue, and the item is not regarded as an admissible asset. It appears that the proceeds of the note went into a corporation organized to manufacture a machine for the purpose of affixing postage stamps to envelopes, which corporation is now defunct.

The past due Thomas G. Turner note, $400, endorsed Charles W. Haberle, is likewise disallowed. It is considered very doubtful that Turner will be able to pay, and as to Haberle,

the Examiner reports that he was assistant postmaster at East Orange, and was apprehended by the post office inspectors on the charge of an embezzlement; that following his release on bail, he disappeared, and his body was later recovered from the Hudson River.

The note of P. L. Clements, $300, endorsed by the Steel Construction Company and A. P. Slade has been past due, as reported, since April 27th. The Examiner reports that there is no hope of collecting it from either Clements or the Steel Construction Company, but that Slade is said to be good, although he has made no response to the repeated demands for payment. The note is considered doubtful. Items of this character should receive consideration and careful attention, or they may become a loss.

The Examiner reports that it is conceded that director Scarlett's financial condition is very bad; that he is trying to run a hat factory at Metuchen, at the same time is carrying on the business of a civil engineer and land speculator at Newark; that he is having great trouble in getting raw material for his factory at Metuchen; that the real estate market is so depressed that his land schemes are eating themselves up, and that his creditors are holding meetings to see what is best to do. The institution holds a single name demand note of his for $10,000, which has remained at that figure for some time. As reported, it is intended to be secured by 135 shares of the common stock of the Graylock Manor Company, and by certain life insurance policies written on the 20-payment life plan, having a face value of $25,000 and a cash surrender

value of $2,425; that the Graylock Manor Company has a capital stock of $100,000 of which $60,000 is common stock and $40,000 preferred; that the preferred stock seems to have preference both as to assets and dividends, although the Examiner was unable to confirm this, not having seen Mr. Scarlett, but if it is so the common stock would seem to have very little value. If a petition in bankruptcy were filed against Mr. Scarlett, it will probably take years to realize on his real estate investments. On the other hand, if he is not disturbed, he may prefer some creditors to others, with the result that somebody is bound to suffer. The Examiner is quite clear in the opinion that the $10,000 loan will show a loss eventually, and he accordingly allows the same as an asset, to the extent of 50% only—equals $5,000. Under the circumstances it would seem wise and prudent for the institution to reduce the loan on its books to $5,000 and carry it as an asset at not more than that figure. It seems that the examining committee recommended, in November, 1911, that the $10,000 loan to director Scarlett be reduced, but that this has not been done.

Moses A. Hoage appears as maker, single name, on a note for $2,537.90. He is admitted to be now financially irresponsible, and is also stated to be *non compos mentis*. It seems that he was formerly the owner of an apartment house, the title to which is now in William C. Armstrong, and that the proceeds of the note were sunk in this property, in one way or another. It is also stated that Armstrong has said that he will pay this note from the proceeds of

the sale of the apartment house if and when he disposes of it. The comment of the Examiner that no man can be compelled to pay another man's debts, on his verbal statement that he will do so, even if there is proof that such a statement was made, is pertinent, in this connection, as is also his further comment that such a guarantee must be in writing. He adds that there is nothing to show, moreover, that Armstrong has any intention to sell the property in question. The note is disallowed as an asset.

Director Woodward has a collateral loan of $7,500, the security held therefor being, in part, $9,000 of Union Waxed and Parolment Parchment Paper Company bonds, first 6's of 1920, which are reported by the Examiner as having no readily ascertainable market value, also that he understands that Mr. J. S. Rippel, of Newark, a bond broker, is trying to sell same at 85, but can find no market whatever. This, as the Examiner states, probably arises, in part, from the fact that has been ascertained that there was an over-issue of these bonds, in such a manner as to amount to a criminal proceeding, but in any event the line cannot be said to be secured as required by law, and its payment should be insisted upon. It seems that as a matter of fact the loan was called a month ago, but without result. Payment should again be demanded.

The notes of H. H. Shackleton, endorsed C. C. Lurich & Co., amount to $7,242, as against $7,446 at the last preceeding examination, being a reduction of only about $20 a month. As the Examiner reports, strictly speaking this is not Mr. Shackleton's debt, he having taken the place on the

paper of Mr. Lurich's partner, who dropped dead on the street. Unless the note should show more rapid reduction, it is recommended that the parties be called upon to secure the same by collateral.

The line of Albert Schurr is considered as undesirable. There is a single name note of his for $700 for which the Trust Company holds 8 2/3 shares of the North American Life Insurance Company. The rest of the line is made up of endorsed notes, aggregating $4,016.47, all of which, as reported, have been given for policy premiums excepting two, amounting to $1,000. It appears that Mr. Schurr has been quite successful as an insurance agent, but he seems to have acquired no tangible property. The Examiner states that he judges the latter to be so from the fact that there is at least one unsatisfied judgment against him, entered up when he conducted some kind of a store, on which Dewitt & Provost, North Ward Bank Building, Newark, have been unable to collect anything.

The line of the International Tobacco Company is a very precarious item in the judgment of the Examiner, even though it shows a reduction since the preceding examination. The Company's statement shows, as reported, that its business for the year ending July 31, 1912, was conducted at a loss of $3,875.75. The assets total $322,-630.23, but of this sum $205,000 represents various patents the value of which, even assuming that there is any, is liable to be materially affected by the introduction of later devices. The book surplus is only $48,107.10, the concern has no commercial rating, and the average balance

carried is insignificant, as reported. The Examiner discovered what appears to have been an attempt at evasion in the statement of the International Tobacco Company's line. It developed during the course of the examination, in a purely accidental manner, that your Company had negotiated, as a broker, two loans with the Tobacco Company, one of $20,000 at the Irving National Bank, of New York, and one of $5,000 at a national bank in Newark. The treasurer stated that the Company had at no time owned these notes, did not regard them as a rediscount, but had consented to guarantee them and had endorsed them with that end in view. If, as stated by the Examiner, this were a true statement of the case, no particular harm would have been done, beyond the fact that it was an injudicious and perhaps illegal act on the part of your institution. He further says that the statement was born out by the fact that the loans appear nowhere on your Company's books; that they were not on the credit ledger, the tickler, the bills purchased register or anywhere where they might be expected to show. The cashier of the Irving National Bank informed the Examiner, however, in writing, that his bank held four notes of the International Tobacco Company, for $5,000 each; that these notes are endorsed by Roseville Trust Company (per R. E. Smith, Treas.), Chester L. Cotton, T. T. Hutchinson, W. J. Bowerman, Paul E. Heller, George V. Strahan, George H. Harman, H. W. Foster, M. Athanasious, Herman Lobel, F. S. McDonell, Colin E. Ross; that the notes were discounted for account of the Roseville Trust Company, and that the proceeds were

placed to its credit, subject to its draft. This places an entirely different phase upon the matter. If your Company received credit for the proceeds and drew against them, it is clearly liable. The Examiner expresses the opinion that these notes were omitted from your company's records for the purpose of keeping the line down, but that just how far the directors were implicated in this particular part of the transaction, he is unable to say. The only reference to the matter in the minutes is the record of a motion to have the contract for the commission in writing. It appears that this commission was to have been $2,500, but has not yet been collected. The liability of your Company on the $25,000 of notes mentioned should be shown on its books and also appear in its reports of condition as bills rediscounted, a like credit to be added, of course, as "bills purchased," but as a doubtful item. The Examiner's analysis of the statement of the said International Tobacco Company make it reasonably clear to him that the concern is over-extended, that its assets are padded, that it is unable to compete with the Tobacco Trust, that its business is conducted at a loss, and that it is liable to come to grief at any time. He also expresses himself as convinced that no such extension of credit would have been granted to the International Tobacco Company were it not for the fact that Mr. Harry W. Foster is an officer of both corporations. What answer have the directors to make to the Examiner's allegation that the notes in question were omitted in your Company's records for the purpose of keeping the line down? A full reply is requested. The De-

partment also desires to be informed as to whether or not the individuals who endorsed the $25,000 of notes under consideration are financially responsible for the amount or not. It seems quite evident that dependence must be placed upon the endorsers for the security of the obligations. If no proper inquiry or investigation has been made as to the responsibility of such endorsers there should be no delay in finding out whether they are good for the notes.

The line of the Sloan and Chase Manufacturing Company, Ltd., now stands at $37,594.51, and is regarded as too large, from the standpoint of their commercial rating or average balance, and it is recommended that it be required to be steadily reduced or secured by tangible collateral. It is now secured by the assignment of certain accounts receivable, and by certain contracts, which assignments are of questionable legal value.

The notes of Joseph Federici, $1,235 as maker and $2,840.75 as endorser, are regarded as of very doubtful collectibility. The Examiner reports that he has to be "dunned" for weeks to take care of his obligations after they fall due, and it is admitted that nothing can be collected from him by the process of law. The line should be eliminated from your Company's books.

The line of H. Northgrave is placed in the doubtful class. As reported, Mr. Northgrave expects to settle with what he (thinks he) is to receive in the matter of a certain suit which he has brought for some hundreds of thousands of dollars, for breach of contract, against his former employers, Moore Bros., Galveston, Texas. As

the Examiner well says, this is scarcely a sufficient basis for a line of credit of $3,234.53.

The paper bearing the name of Edward D. Birkholz, maker $5,987.44, endorser $3,075, is reported as being protected by mortgages as general collateral. It is recommended that he be called upon to maintain a fair average balance, his account being frequently overdrawn.

The demand note, $3,000, made by George H. Jacobs, president and treasurer of the Cogswell and Boulter Company, intended to be secured by 48 shares of the stock of that concern, shows no reduction since the last preceding examination. This collateral is not marketable. The loan should show reduction at each interest period.

The bonds of the New York Knife Company, of which $6,000, par value, are pledged as collateral for a loan of $5,000 to Walter Geere, appear to have no readily ascertainable market value, and therefore are not the kind of collateral security required by the statute. The interest coupons are stated to be paid regularly, and the bonds may have intrinsic value, but in order to come within the law they should also have a quoted or easily ascertainable market value. The institution should conform more closely to the requirements of the law in accepting securities as collateral.

The line of Miele and Bruno, contractors, is considered entirely too high. As the Examiner states the firm has recently built a sewer at South River, on which some moneys are still due; that as far as appears these funds are properly assigned, and, if paid at all, will be paid to your Company. But there is always considerable uncertainty about these municipal contracts, the

money being withheld under the guise of penalties or as a guarantee for future repairs, or for various reasons of a like character. In any event, the amount, $27,000, seems clearly too large for your institution to have so tied up.

The line of C. A. Morel shows a reduction of only $240 since the preceding examination, and now stands at $19,280.92. He has a good rating, but is reported by the Examiner to be a real estate speculator, pure and simple, and his line should be reduced in order to demonstrate that he is as good financially as he is reputed to be.

The demand note of John LaVergne has been standing at $590 for more than two years. It should show a reasonable reduction at each interest period.

Regarding the loan of $700 to the Ingersoll Company, intended to be secured by a bond of the Union Waxed and Parchment Paper Company—reference is made to what is stated in the earlier part of this communication concerning these bonds, under the paragraph relating to director Woodward's $7,500 collateral loan.

The matter of the note for $1,175 made by W. H. Ingersoll, formerly a director of the institution, and endorsed by the Alcohol Utensil Manufacturing Company—Ingersoll is reported to be an accommodation maker, and will have the note to pay, since the Alcohol Utensil Manufacturing Company has been merged and absorbed. The reduction of $75, which the item shows for the last ten months, is not sufficient for a note of this size and character. A more substantial reduction should be insisted upon.

The loan of $4,685.14 (at last examination $3,-

205.95) to "Dickerman's" an incorporated concern is intended to be secured by the assignment of certain accounts receivable. But as the Examiner states the method of procedure is such that your Company could not proceed to collect, if it should be obliged to take steps to endorse its rights, except by the production of its own books to show that certain amounts had been credited to the account of "Dickerman's" and had been drawn out, and that this evidence would probably be objected to. There is no note, nor bond, nor promise to pay of any description, the only evidence of indebtedness being the filing of certain bills made out to various customers of "Dickerman's" on the back of each bill being an endorsement purporting to make the bill payable to the Trust Company. The customer has not been notified of the assignment, and consequently has not accepted it. If and when he pays his bill, "Dickerman's" remits to your Company. It seems that your institution receives a discount or commission of 5% on each item regardless of whether "Dickerman's" has the use of the money for one week or six months. The comment of the Examiner that this institution calls for a remedy is certainly to the point, and it devolves upon the management to correct it.

There is no record on the minutes of any resolution authorizing the borrowing by the treasurer of $55,000 on August 22, 1912. The Treasurer informed the Examiner that such a resolution was passed, but the records of the institution do not show it. By resolution adopted July 16, 1912, he was empowered to borrow up to $25,000 only. Your confirmation of the treas-

urer's statement that a resolution authorizing the borrowing of the additional sum of $55,000 was adopted is requested. All resolutions of the kind should be recorded in the minutes hereafter.

As reported, there is no record of certificates of deposit other than the stubs, and that stubs numbers 34, 35, 37, 38, and 39 show blank. On searching the cash book it developed that these five certificates, for $500 each, went through the work June 17, 1912. The institution should obtain and use a certificate of deposit register, in which full details of these certificates should be set forth.

At date of examination there were sixteen items of overdrafts, according to the Examiner's report, the total being $1,135.73. The granting of overdrafts is inconsistent with good banking and cannot be approved by this Department, and it is advised that the practice be curtailed.

You will, of course, submit this letter to each director of the institution for whose information it is intended. Your acknowledgment of its receipt and advices of the action taken upon the matters touched upon are requested.

Yours truly,

THOS. K. JOHNSTON.

Exhibits Annexed to Complaint

(Printed Letter Head.)

ROSEVILLE TRUST COMPANY

Newark, N. J., Nov. 1, 1912.

Mr. Thos. K. Johnston, Deputy Commissioner,
Banking and Insurance,
Trenton, N. J.

Dear Sir:

I beg to acknowledge receipt of your communication of October 28, and will read your letter to the Directors at our next meeting, when we shall go over carefully the contents thereof.

Yours very truly,
WM. P. ODELL,
President.

(Printed Letter Head.)

ROSEVILLE TRUST COMPANY

Newark, N. J., November 25, 1912.

Hon. Geo. M. LaMonte,
Commissioner of Banking & Insurance,
Trenton, New Jersey.

Dear Sir:

In reply to the letter of Deputy Commissioner, Thos. K. Johnston, dated October 28th, the receipt of which has already been acknowledged, I wish to state that the letter has been carefully read by myself and has also been submitted to our

Directors at the regular meetings of the Executive Committee and the Board of Directors.

As to the past due paper which at the time of the examination aggregated some $27,940.43, and which Mr. Johnston states is an "interesting exhibit" I beg to state that this figure has been cut down to Eighteen Thousand odd dollars. There were several notes included in these past dues which were only temporarily past due, and proper arrangements had been made within a few days after their due date.

You no doubt are aware that it has been the policy of this institution for the last two years to build a fund called on our books Provident Reserve Fund, for the purpose of taking care of any losses which may occur from time to time. This fund (carried in the individual ledger as suggested by your representative) has grown to be $8,000.00 and will total by the last of this year at least $10,000.00. You make no mention of this fund which we have not carried along as an asset, and on the other hand you state that several notes carried by us are dis-allowed as assets.

At the close of this year, we expect to charge against this Provident Reserve Fund whatever past due loans are considered absolutely uncollectible or bad.

The Ferguson Contracting Company's note for $2,500.00 we are perfectly sure will not be paid or any part thereof, but the Independent Steel & Wire Company note endorsed by Wm. A. Hirsh we are satisfied will be settled for at least fifty per cent (50%) of its face value, we already having refused an offer from Mr. Hirsh to settle on the basis of twenty-five per cent (25%).

We have every reason to believe that something will be forthcoming on the Canfield notes aggregating $5,920.75. This claim was originally $10,920.75 two notes having been paid off amounting to $5,000.00 which proves that all of the Canfield paper is not absolutely bad.

The Ehrlich note for $300.00 endorsed by the European American Bank will without question be paid in full.

The Romine Estate has not as yet been settled, but we understand on good authority that the Administrator will declare a dividend of from fifty to seventy per cent. There is a question in the mind of the writer whether Mr. Romine committed forgery or not; thus far there has been no positive proof of his having been guilty of such a crime.

The Storiettes Publishing Company notes for $943.55 and $1,017.00 are being gradually cut down, and we are satisfied will eventually be paid by demanding payments by degrees.

The Jane A. Curtis note for $2,290.00 we consider absolutely good. We have in our possession a statement signed by Mrs. Curtis, duly witnessed, given to us for the express purpose of obtaining credit from us, setting forth her worth to be over $100,000.00.

The Thos. F. Turner note of $400.00 is still in abeyance and there is some question as to whether we will receive payment for this note.

The P. L. Clements note for $300.00 endorsed by A. P. Slade, will no doubt be paid in time, as Mr. Slade's estate has not as yet been settled. I am told on good authority that his estate is good.

It is our intention to get an up-to-date state-

ment from Director Scarlett, showing both his liabilities and assets, as well as from the different companies in which he is interested, and should the collateral which we hold be worthless or not enough for the loan of $10,000.00, we shall see that additional security shall be given us or the loan reduced.

The matter of Mr. M. A. Hoage, Jr. $2.537.90 has been guaranteed by Mr. W. C. Armstrong in writing, which makes this loan absolutely safe.

We have written Director Woodward since the examination requesting that his loan of $7,500.00 on collateral of Union Waxed & Parchment Paper Co. be paid without further delay.

The note of J. H. Shackleton (not H. H.) endorsed by C. C. Lurich & Co. for $7,242.00 we consider very desirable. Mr. Shackleton is, as you know, the Treasurer of the Fidelity Trust Company of Newark; he is also a stockholder here. Mr. Lurich is one of our Directors, and the account of C. C. Lurich & Co. is very satisfactory indeed. This is Mr. Shackleton's personal liability, and has nothing to do with Mr. Kolodin, who you state was Mr. Lurich's partner (which is not true) and who died very suddenly.

The line of Albert Schurr is well divided into many customers' notes and his average balance is very satisfactory with us. It appears to us that in view of the fact that we hold eight and two-thirds (8 2/3) shares of the North American Life Insurance Co. stock, which is quoted from $350.-00 to $400 as general collateral for Mr. Schurr's loans, and also that his total line of Four Thousand odd dollars is made up of fifteen (15) different names, that this line is very desirable. We

have had many dealings with Mr. Schurr and he has always made good.

The line of Sloan & Chace Mfg. Ltd. is being reduced in good shape, at the present time being Thirty-five Thousand Two Hundred Dollars odd, and we are absolutely secured as explained to your representative not only by assignments of accounts of various concerns, but there was also assigned to us several months ago, sufficient insurance on the life of Chas. A. Haney, Vice-President and Manager of Sloan & Chace Mfg. Co. Ltd. to cover the entire line. Mr. Haney recently died, and the money is now on deposit with us to the credit of his Estate, with an agreement from his executor that this money shall apply on the loan, if said loan is not paid in due season, or remain on deposit until all loans of the company are paid in full.

Joseph Federici is cutting his notes down slowly but surely. We believe our policy in dealing with him will work out well, and the loans will eventually be paid. His line was originally over $8,000.00 and is now about $4,000.00.

The line of H. Northgrave for $3,234.00 will be very materially reduced, if not paid in full, within a short time, as there seems to be no question but what Mr. Northgrave will win his suit, which is not for breach of contract as you state, but for certain notes which Mr. Northgrave holds against Moore Brothers. They more than make up the amount of his indebtedness to us.

Edward K. Birkholz had been notified as to his balance previous to your examination, and he is at the present time negotiating to cash in a certain security which will enable him to carry a balance worth having.

Exhibits Annexed to Complaint

The Jacobs note of $3,000.00 secured by forty-eight (48) shares of the stock of the Cogswell Bolter Co. we consider perfectly safe. Statement of this company shows it to be in excellent condition.

The New York Knife Co. bonds are said to be worth par, interest having been paid regularly, and there is also the endorsement of the New York Knife Co. on the back of this note. This company is rated from $250,000 to $400,000 high credit. The proceeds of this not was placed to the credit of the New York Knife Co. and used by them in due course of business.

The line of Miele & Bruno, while it seems very high, is only a temporary matter. We have in our possession assignments of money which we are satisfied will bring us at least $18,000.00 in the near future. We also have second mortgages amounting to $12,000 which are very good, of which no mention is made in your letter.

The line of C. A. Morel we are satisfied will be reduced considerably in the near future. A part of this line, as you no doubt are aware, is endorsed by the Willette-Lawless Lumber Company, and also part by the New Jersey Cement Construction Company; not as accommodation endorsers, but on notes given for lumber and materials.

The LaVergne matter, $590.00 will be looked into closely. This loan is secured by second mortgage of $600.00.

We are negotiating to sell the bond of the Union Waxed & Parchment Paper Company, which is collateral for $700.00 note of the Ingersoll Company.

Regarding the note of $1,175 made by W. H. Ingersoll to the order of the Alpha Alcohol Utensil Company; I beg to state that Mr. Ingersoll is not an accommodation maker on this note, as you state, but this note was originally $1,500.00 and it was given for stock in the Alpha Alcohol Company.

As to the International Tobacco Co. loan which you state is a very precarious item, I beg to state that we purchased these notes absolutely on the strength of the endorsers, which are well distributed on the several notes, and which endorsements are absolutely good for the face of the notes.

As to the loan of $20,000.00 which was negotiated at the Irving National Bank, I beg to state that this matter was brought up before our Executive Committee on July 5th, and we agreed to negotiate a loan for the International Tobacco Company at a commission of ten per cent (10%) as stated in your letter. This appears on the minute book of the Extcutive Committee on the above date. As we had no money at that time to loan in large amounts, it was agreed that we should negotiate a loan through another institution. There was no attempt at evasion in the statement of the International Tobacco Company's line; such a thing was not thought of, and the Directors wish me to state most emphatically that it is not the policy of our Board to conceal anything nor to consider anything that might call for concealment or subterfuge. The Directors express regret that the Department has seemed to place such a construction on this matter. We are perfectly satisfied that the endorsements

on these four notes for $5,000 each are good for many times the face of the notes, and it was on the strength of these endorsements only that we would consider negotiating the loan. While Mr. Foster is an officer in each company, his influence had no effect whatever in the action of the Executive Committee in this matter. Suffice it to say that the writer has known Mr. Foster for over twenty years and has always held him in high esteem.

This money was raised to buy Turkish Tobbaco abroad, at wholesale, and the warehouse receipts are to be retained as collateral just as soon as the goods are in bond. Mr. M. Athenasius whose name appears on the back of these notes, represents the International Tobacco Company in Turkey, and is considered an expert buyer of tobacco. Tobacco has been bought and shipped and is expected here in the very near future.

Since having received your letter we have treated these notes as regular purchased paper, and have made the proper entries on our books.

The Dickerman assignments we have already taken up with Mr. Dickerman and will have them in proper shape in the near future.

There was a resolution passed at a regular meeting of the Executive Committee on August 22d, authorizing the Treasurer to borrow $55,000 which was an oversight in not having the same on the Minute Book, which oversight has been corrected.

The matter of Certificates of Deposit, the stubs on #34, 35, 36, 37, 38 and 39 which showed blank, were filled in at the time your representative was here, and the omission to fill these out

was a mistake on the part of one of our Tellers, a thing which seldom happens in this institution, as we are very careful about filling out stubs. We have, however, ordered a Certificate of Deposit Register as you suggest.

The matter of over-drafts amounting to $1,-135.73 I beg to state that these were all temporary and all were promptly made good. This Institution has never lost a dollar on over-drafts, and great care is taken in over-paving accounts.

Yours very truly,

WM. P. ODELL,
President.

November 26, 1912.

William P. Odell, Esq., President,
Roseville Trust Company,
Newark, New Jersey.

Dear Sir:

Your letter of the 25th instant, in reply to the Department's communication of the 28th ultimo, in reference to the report on the last official examination of your Company, is received. In his report the Examiner made mention of the $8,-000 carried on the demand ledger to the credit of an account entitled "Contingent Fund," by stating that this account was expected to be increased by $2,500 with commissions due on the loans negotiated for the International Tobacco Company, if and when connected. This Fund will, of course, be available to meet any loses

which may be sustained on loans or investments. If, however, the Examiner's estimate as to losses on loans turns out to be correct, the amount of the Fund will not be a sufficient offset. Your advices that the Company expects to charge against this Fund whatever past due loans are considered absolutely uncollectible or bad, are noted. This would, of course, have the approval of this Department.

You make a favorable statement as to nearly all of the items criticised by the Examiner, and also take exceptions to the views he expressed as to the amounts the Company will collect on such items. It is hoped that you are nearer the mark than he is, but it will be for the future to determine which is correct. In this connection you are expected to keep this Department informed from time to time of any changes that may take place in the status of the items to which reference is made.

Have all of the directors of the Company seen and read my communication of the 28th ultimo? You state that the letter had been carefully read by yourself and has also been submitted to the directors at the meeting of the Executive Committee and the Board of Directors, but the Department desires to know definitely, whether my letter has been shown to and read by each director of the Company.

Yours truly,

THOS. K. JOHNSTON,
Deputy Commissioner.

Exhibits Annexed to Complaint

(Printed Letter Head)

ROSEVILLE TRUST COMPANY

Newark, N. J., Jan. 10, 1913.

Hon. Geo. M. LaMonte, Commissioner,
Banking & Insurance,
Trenton, N. J.

Dear Sir:

Pursuant to your request of November 26, regarding the disposition of past due paper mentioned in your letter of October 28th, I beg to state that it was the decision of our Directors to wait until the close of the year to charge off whatever paper we considered uncollectible, and also to enlighten you at the same time as to the other matters mentioned in your letter.

On December 31st we increased our contingent, or Provident Reserve Fund, to $10,031.00 and against this account we have charged off the following notes:

Ferguson Contracting Co.	$2,500.00
Independent Steel & Wire Co.	1,210.25
Etlinger Co.	1,520.75
American Concrete Co.	1,500.00
Edgar Klein	2,150.00
Beach Lumber Co.	750.00
Thos. Turner	400.00

The Romine Notes and F. Ehrlich & Sons we have had no settlement from as yet.

The Storiettes Publishing Co. notes have been reduced $100.00 and properly taken care of.

Exhibits Annexed to Complaint

The International Tobacco Co. have purchased all their tobacco, and we have warehouse receipts for same. A portion of this tobacco was sold a few days ago.

The line of Miele & Bruno has been reduced to $16,700 and a further reduction is expected this month.

I have submitted your letter to every Director on the board with the exception of two, who were both out of town and have been for several weeks. Upon their return, however, I shall be very much pleased to submit your communications to them.

Yours very truly,

WM. P. ODELL,
President.

January 11, 1913.

William P. Odell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

Your favor of the 10th inst. received and duly noted.

In your communication of Nov. 25th last you stated that it is the intention to get an up to date statement from Director Scarlett showing both his liabilities and assets, as well as from the different companies in which he is interested, and that should the collateral which the institution holds be found to be worthless or not enough for

the loan of $10,000, Mr. Scarlett would be required to give additional security or reduce the loan. Has this statement been received? Please advise, and if so, forward a copy of same.

Yours truly,

THOS. K. JOHNSTON,
Deputy Commissioner.

Exhibit J

	Paid in cash.	Surrender of credit.
William Fairlie	$30,000.00	
John S. Bell	15,000.00	
William P. Odell		$41,000.00
Elmer K. Sexton	432.97	4,567.03
Frederick Kilgus	6,770.14	8,229.86
William J. Banister	12,500.00	
James B. Banister	8,000.00	
Clinton F. McCord	9,000.00	
William W. Woodward	5,000.00	
	$86,703.11	$53,769.89

Answer of Charles C. Lurich and George E. Krug

(*Filed July 23, 1916*)

In Chancery of New Jersey

Between George M. LaMonte, as Commissioner etc., in behalf of and in the name of Roseville Trust Co., Complainant, and Harvey Mott, *et al.*, Defendants.	On Bill

The joint and several answers of Charles C. Lurich and George E. Krug.

These defendants answering the bill of complaint say that:

1. Paragraph 1 is admitted, except that these defendants have no knowledge or information sufficient to form a belief as to whether the alleged copy of the certificate of incorporation of Roseville Trust Company, annexed to the bill of complaint, is a true and correct copy; and leaves complainant to prove the contents of said certificate, if it become necessary so to do.

2. Paragraph 2 is admitted, except that these defendants have no knowledge or information sufficient to form a belief as to whether the alleged copy of the by-laws of said Roseville Trust Company is a true and correct copy.

3. Paragraph 3 of the complaint is admitted.

4. As to paragraph 4, these defendants admit that the Commissioner of Banking and Insurance took possession of the property and business of the Roseville Trust Company, and retained such possession, as complainant alleges; these defendants have no knowledge or information sufficient to form a belief as to the other matters alleged in said paragraph.

5. Paragraphs 5, 6, 7 and 8 are admitted.

6. As to paragraph 9: these defendants deny that Roseville Trust Company suffered the losses alleged in said paragraph; they admit that the Commissioner of Banking and Insurance has collected part of the assets of the aforesaid Trust Company and has made payments to the creditors thereof; but have no knowledge or information sufficient to form a belief as to the other matters alleged in said paragraph, especially the notice alleged to have been given, the careful examination alleged to have been made, the diligence alleged to have been displayed, and the realization upon the good assets of the Trust Company alleged by complaint.

7. Paragraphs 10 and 11 are denied as far as they charge that any losses of the Roseville Trust Company or the alleged failure and insolvency of said company were occasioned by the neglect and failure of these defendants (or either of them) to perform their lawful duties as directors of said Trust Company; these defendants believe from information received and knowledge gained since August 14th, 1913 that said Trust Company

suffered large losses, the amount of which is unknown to these defendants (who have no access to the records of said Trust Company) by reason of the conduct of the defendant Raymond E. Smith and possibly of other persons named in the Bill of Complaint, but these defendants say that this conduct of Raymond E. Smith was unknown to these defendants prior to August 14th, 1913 (on which day the Commissioner of Banking and Insurance aforesaid took into his hands the affairs of said Trust Company) and were so unknown despite the fact that each and both of these defendants, while Directors of said Trust Company, were most diligent, careful and attentive to their duties as such Directors and in the performance thereof, and despite the fact that these defendants, as such Directors did all things which by law they were bound to do as such Directors and left none of the things undone, which as Directors, they were bound not to leave undone; and these defendants further say that no loss suffered by the Roseville Trust Company was occasioned by or resulted from any unlawful or negligent act (or failure to act) of these defendants or either of them; further that the conduct of said Raymond E. Smith, which occasioned said losses was so carefully and cleverly concealed and hidden that these defendants are not chargeable (nor is either one of them chargeable) with notice or kowledge of such conduct; and especially, these defendants are not (and neither one of them is) chargeable with notice or knowledge of the conduct of said Smith, in such a way as to make them or either of them legally accountable for said losses or any part thereof;

further these defendants deny that their duties as Directors are accurately set forth in the eleventh paragraph of the bill of complaint but admit that their duties were all such as by the statutes and laws of the State of New Jersey were cast upon them.

8. Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 are denied.

9. With reference to paragraph 24th of the bill of complaint: these defendants admit that a letter of substantially the tenor of the first letter in Exhibit 1 was written as alleged in the bill of complaint, but have no knowledge or information sufficient to form a belief as to whether said Exhibit I is a true copy of said letter; they also admit that as a result of that letter said Smith offered his resignation as alleged, and that the entire board of Directors of said Trust Company (Munroe excepted) by unanimous vote, refused to accept said resignation; but these defendants say in rgard to this, that the action of said Board of Directors and of the members thereof was based upon full, complete, rational, careful and mature deliberation and discussion and that such action was not the result of, nor does, nor did it involve any neglect or legal default on the part of these defendants, but, as far as they are concerned and in the light of such knowledge and notices as they then had, was a lawful act, lawfully performed in the lawful discharge of their duty; that these defendants in refusing to accept said resignation of Smith believed that they were acting for the best interests of the Trust Company and such belief was a belief which any

reasonable and prudent man might have come to under the circumstances; these defendants have no knowledge or information sufficient to form a belief as to whether the copies of the letters (after the first dated May 14, 1909) constituting part of Exhibit I attached to said bill of complaint, are correct copies, nor whether these defendants are chargeable with notice thereof as alleged; but these defendants deny that they were ever inattentive, lax, guilty of neglect or incompetence and deny that they "continued in their course of inattention, laxness, neglect and incompetence" as alleged at the end of the 24th paragraph of the bill of complaint.

10. Referring to the 25th paragraph: these defendants admit that an examination of the books of the Roseville Trust Company was made by the committee named on or about December 16th, 1912; that a report was duly presented to and accepted by the Board of Directors of the Trust Company at a meeting on or about July 8th, 1913; these defendants deny all other allegations in said paragraph contained.

11. Referring to the 26th paragraph of the bill of complaint: these defendants admit that Smith distributed statements at the regular meetings of the Board of Directors and of the Executive Committee of the Roseville Trust Company; these defendants say that they examined such statements as came to their notice carefully and that by reason of nothing in such statements contained, or their actions in connection therewith, are they legally chargeable with any losses suffered by the Roseville Trust Company; they deny all

statements in said paragraph not hereinabove admitted.

12. Paragraphs 27, 28 and 29 are denied.

13. These defendants have no knowledge or information sufficient to form a belief as to the statements made in paragraph 30.

14. These defendants admit the declaration of the dividends tabulated in the "statement" referred to in paragraph 31; but deny that they in violation of law, declared dividends, or participated in the declaration of dividends, when no profits had been earned and when there was no surplus out of which the same might be lawfully declared; and in this connection these defendants say that both of these defendants participated in the declaration of dividends by the Board of Directors, after careful and diligent examination of the earnings of the company as they were disclosed by the records and books of the company, and out of earnings disclosed by said books and records; each and every portion of said paragraph not specifically admitted or explained by these defendants, is hereby denied.

15. With reference to paragraph 32 of the bill of complaint, these defendants say:

First: That the complainant has received from William P. Odell and the other persons named in Exhibit J. the sums therein mentioned, making an aggregate of $140,500.00; that said aggregate was received from said persons in full settlement and satisfaction of all claims against them by reason of their acts as Directors of said Roseville Trust Company; that all losses, if any,

sustained by said Trust Company, by reason of the acts or default of these defendants or either of them as Directors, were the joint product or result of said acts or default of these defendants and of the persons named in Exhibit J.; that said sum of $140,500.00 fully covers all losses, if any, sustained by said Trust Company, by reason of any acts or default of these defendants (or either of them) for which these defendants (upon any theory of law or interpretation or view of the facts) were accountable and liable to reimburse said Trust Company or complainant; that any claim which said complainant may have or might have had against the defendants is fully satisfied by the sums received from said persons named in Exhibit J. and these defendants are thereby discharged from all liability to complainant; further that complainant by deeds of release under his hand and seal has fully acquitted, released and discharged the persons named in Exhibit J. of all claims and demands and causes of action or liability therefor, alleged in complainant's bill of complaint; and by reason of said releases these defendants are released and discharged of all liability to complainant.

SECOND: The persons named in Exhibit J, at the time the moneys tabulated in Exhibit J were received from them, were persons of great wealth; especially William Fairlie, John S. Bell and William P. Odell; and said persons so released were fully capable of meeting and liquidating all losses, if any, sustained by the Roseville Trust Co., by reason of any acts or default of these defendants (or either of them), which would make these defendants, as Directors, liable to

said Trust Company in connection with said losses (upon any view of the law or the facts alleged in the bill of complaint); said persons so released all participated, as Directors, in all acts of these defendants which could possibly be the foundation of any such liability of these defendants to said Trust Company; William P. Odell by reason of the fact that he was President of the Trust Company and was entrusted with and undertook as such the daily and immediate supervision of the affairs thereof, is in any event, primarily liable with respect to these defendants for all losses for which these defendants (or either of them) may be liable as aforesaid to said Trust Company; this was all well known to complainant at the time he released the persons named in Exhibit J; had complainant not released said persons, it would have been possible, if the averments in the bill of complaint, as against the persons named in Exhibit J, are true, (and if they are not true as against those persons, they are not true as against these defendants) for the complainant to have recovered from those persons the full amount of the losses which were occasioned by their acts, and these defendants would have had an opportunity of contributing their fair share, if they are liable at all, towards reimbursing the Trust Company; these defendants, if liable to the Trust Company at all, are so liable not for any intentional and conscious wrong doing, but are liable because of the wrongful acts of others, expecially the defendant Smith; the complaint alleges that the defendants, Smith, Jennings, Armstrong, Scarlett, Bruno, Miele and others mentioned in the 30th paragraph of the

bill of complaint are insolvent; if this be true, it was equally true at the time the settlements with the settlements with the persons mentioned in Exhibit J were effected; the remaining defendants (other than Smith and Scarlett) are all men of small resources, who have been and are utterly unable to reimburse the Trust Company for the alleged losses charged in the bill of complaint, or for any part but a negligible fraction thereof; this also was well known to the complainant at the time he made said settlements; these defendants were at all times since the formation of said Trust Company stockholders thereof and depositors therein, and were so on August 14th, 1913, of which complainant had due notice; nevertheless the complainant made said settlements with said persons mentioned in Exhibit J, and discharged them from all liability in this suit and all liability by reason of any of their acts or defaults alleged in the bill of complaint and so has prevented and destroyed all opportunity of these defendants to cause either by extra-judicial means or in the course of this suit, said persons named in Exhibit J, to contribute what a full examination of the matters in controversy may disclose that they should contribute, and what in equity and good conscience they should contribute to settle in full the losses of said Trust Company; and these defendants are advised that by reason of said conduct of complainant they are exonerated and discharged of all liability charged against them in the bill of complaint.

THIRD: These defendants are without knowledge or information sufficient to form a belief as to the terms of the agreemnt of December 10th,

1913 and ask the production of the same to this Court; but these defendants deny that the settlements referred to in the first part of paragraph 32 were made "without prejudice to the causes of action against the other Directors" as in the bill of complaint alleged.

FOURTH: These defendants deny that the Roseville Trust Company suffered losses during the times in said paragraph mentioned of upwards of $640,000; they believe as heretofore stated that said company suffered losses, to an amount unknown to these defendants, but far less than is stated by complainant; these defendants further say that in esitmating the losses of the said Trust Company, there must be deducted from the *prima facie* aggregate of claims against the Trust Company all claims and demands of the Directors who settled with the complainant and all claims and demands of all defendants who in this suit may be found to be legally chargeable and liable for such losses as may be proven by complainant to have occurred; further these defendants repeat that they were not guilty of and are not chargeable with any acts omissions or neglect by which said losses occurred but on the contrary at all times, during which they were Directors, they and each of them fully, faithfully and diligently performed their duties as such; they as Directors undoubtedly made mistakes in judgment, but such mistakes were the mistakes which any reasonable and prudent man in their position might have made, and for such they are advised that they are not legally chargeable.

FIFTH: After August 13th, 1914, these defendants and each of them filed with complainant a duly verified proof of their respective claims against Roseville Trust Company in accordance with the provisions of Chapter 171 of the Laws of 1913 in the bill of complaint mentioned, exhibiting the amounts of their respective claims over and above all off-sets or counter-claims; such claims were duly allowed and have been paid by said Commissioner or by other persons in his behalf out of the very funds of the Roseville Trust Company without dispute or challenge; whatever basis there might be to the charges made against these defendants by complainant in his bill of complaint, was as fully in his knowledge at all times after these defendants presented and filed their aforesaid verified proofs of claims as at the time the bill of complaint herein was filed and was asserted by complainant at the time such proofs were filed; these defendants are advised that complainant is by reason of these matters precluded from now asserting that he is entitled to the counter-claims against these defendants, alleged in his bill of complaint.

SIXTH: With respect to all other matters in said paragraph 32 referred to, these defendants are without knowledge or information sufficient to form a belief.

Paragraph 33 is denied as far as it relates to these defendants.

OTTO A. STIEFEL,
Solicitor of Defendants,
Charles C. Lurich & George E. Krug.

Replication on Answers of C. C. Lurich and G. E. Krug

(*Filed July, 1916*)

IN CHANCERY OF NEW JERSEY

Between GEORGE M. LAMONTE, as Commissioner, etc. in behalf of and in the name of Roseville Trust Company, Complainant, and HARVEY MOTT, *et al.*, Defendants.	On Bill

The complainant joins issue on the joint and several answers of the defendants Charles C. Lurich and George E. Krug.

ROGER HINDS,
Solicitor for Complainant.

Notice

IN CHANCERY OF NEW JERSEY

Between GEORGE M. LAMONTE, as Commissioner, etc. in behalf of and in the name of Roseville Trust Company, Complainant, and HARVEY MOTT, and others, Defendants.	On Bill, etc.

Notice is hereby given that you are required to serve upon the undersigned within five days after the date of service hereof upon you, a copy of the agreement alleged in the 32d paragraph of the bill of complaint to have been made with William P. Odell and other parties, on December 10th, 1913.

OTTO A. STIEFEL,
Solicitor of Defendants C. C. Lurich and G. E. Krug.

Dated, Newark, N. J., September 9th, 1916.

To:

Roger Hinds, Esq.,
Solicitor of Complainant.

Notice

September 11, 1916.

Otto A. Steifel Esq.,
Prudential Building,
Newark, N. J.

Dear Mr. Stiefel:

Roseville Tr. Co. V. Directors.

I have your favor of the 9th enclosing notice, which I presume has been prepared with reference to Chancery rule 42. You will observe, however, that this rule refers only to documents which are in writing, and inasmuch as the agreement mentioned in the 32d paragraph of the bill of complaint was, so far as I have been able to ascertain, verbal only, I am sending you back the notices. This verbal agreement was made in view of the facts set forth in the petition upon which the Chancellor made the order dated December 30, 1913 approving the sale of the trust company's assets to the Mutual Bank of Roseville and certain other acts of the Commissioner, and in view also of the agreement between the Commissioner and the Mutual Bank of Roseville which is referred to in that order. All of these papers are on file in the Chancery Court at Trenton, and there available to you. Unfortunately I have no complete set of these papers in the office.

Apparently you have overlooked the matter of the costs taxed against your clients in the order denying your recent motion to strike out.

Very truly yours,

ROGERS HINDS.

Order

(*Filed November 28, 1916*)

IN CHANCERY OF NEW JERSEY

Between GEORGE M. LAMONTE, as Commissioner, etc. in behalf of and in the name of Roseville Trust Company, Complainant, and HARVEY MOTT, *et al.* Defendants.	On Bill

This matter being opened to the Court by Otto A. Stiefel, Esq., of counsel with defendants, Charles C. Lurich and George E. Krug, in the presence of Roger Hinds, Esq., solicitor for complainant, upon due notice that application would be made for an order amending the answer filed on behalf of the said defendants to the bill of complaint in the above entitled cause; and the said parties having been heard and it appearing to the Court that said application is well found.

It is on this twenty-eighth day of November, 1916, ORDERED, that the answer of the defendant Charles C. Lurich and George E. Krug, to the complainant's bill of complaint, hertofore filed in the above entitled cause be and the same hereby is amended in the following particular, namely:

By adding to that portion of the 15th paragraph of said answer, which ends in the first line

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on the 7th page of said answer, as filed in the above entitled cause, these words:

"Further that on or about the 9th day of February, 1914 the complainant as Commissioner of Banking and Insurance did execute and deliver to the defendant Fred Kilgus (being one of the persons above referred to as released by the complainant) the complainant's release under his seal in words and figures as follows:

"TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN,

Greeting:

KNOW YE that I, GEORGE M. LAMONTE, Commissioner of Banking and Insurance of the State of New Jersey, for and in consideration of the sum of Six Thousand seven hundred and seventy dollars and fourteen cents ($6,770.14), lawful money of the United States to me in hand paid by FRED KILGUS, of the City of Newark, County of Essex and State of New Jersey, and the release, cancellation and satisfaction of a claim amounting to Eight thousand two hundred twenty-nine dollars and eighty-six cents ($8,229.86) against the Roseville Trust Company, have remised, released and forever discharged, and by these presents do for myself and my successors in office remise, release and forever discharge the said Fred Kilgus, his heirs, executors and administrators of and from all manner of action and actions,

cause and causes of action, suits, sums of money, damages, claims or demands arising from the civil liability of the said Fred Kilgus for loss or damage caused or produced by any act of commission or omission while acting as an officer or director of the Roseville Trust Company; it being expressly understood and agreed, however, that the said Fred Kilgus by this payment and by the release, cancellation and satisfaction of said claim shall not be released or acquitted of or from any liability to the said Roseville Trust Company or to the Commissioner of Banking and Insurance of the State of New Jersey for money due said Trust Company either on notes, overdrafts or other instruments of indebtedness, or for money had or received, or obtained by collusion with any officer or employee of said Trust Company; nor shall this release in any way relieve, acquit, or absolve the said Fred Kilgus of or from any responsibility or liability for any violation of any law or statute imposing criminal liability.

In Witness Whereof I have hereunto set my hand and seal this 9th day of February, One thousand nine hundred and fourteen.

GEO. M. LA MONTE (L. S.)
Comm. Banking & Ins. of
State of N. J."

Signed, sealed and
delivered in the
presence of:
Wm. L. Morgan.

Order

"Further the consideration set forth in said release was duly paid by said Fred Kilgus to complainant; complainant was at the time of the execution and delivery of said release the Commissioner of Banking and Insurance of the State of New Jersey and was duly authorized and empowered to execute and deliver said release; further that said release was not executed and delivered without prejudice to the causes of action against these defendants alleged in complainants bill of complaint; and by reason of said release these defendants and each of them are released and discharged of all liability to comlainant (if any) with respect to any of the matters or things charged in the bill of complainant."

It is further ORDERED that the complainants replication heretofore filed to said answer may stand as a replication to said answer as amended under the terms of this order, and that the complainant is not required to file a new or further replication.

It is further ORDERED that the complainant on the hearing shall be entitled to offer such proofs with regard to the subject matter of the foregoing amendment as he would be entitled to offer under any form of replication whatsoever.

Respectfully advised,

FREDERICK W. STEVENS,
V. C.

Answer of Edward D. Dunn

(*Filed August 10, 1915*)

IN CHANCERY OF NEW JERSEY

ROSEVILLE TRUST COMPANY, Complainant, vs. HARVEY MOTT and others, Defendants.	On Bill

THE ANSWER OF THE DEFENDANT EDWARD D. DUNN:

This defendant, Edward D. Dunn, answering the bill of complaint, says that:

1. He admits paragraph 1.

2. He admits paragraph 2.

3. He admits paragraph 3.

4. He admits that on August 14, 1913, the Commissioner of Banking and Insurance of the State of New Jersey took possession of the property and business of the Roseville Trust Company on the claim that it was insolvent; but otherwise he has no knowledge or information sufficient to form a belief as to the statements of paragraph 4.

5. He admits that on January 9, 1912, he was duly elected and on January 14, 1913, was re-elected director of the Roseville Trust Company by the stockholders thereof at meetings of said

stockholders duly convened for said purpose, that after each election he duly qualified as such director and duly made and filed the oath required by law, not as stated in the bill of complaint, but that he would, so far as the duty devolved on him, diligently and honestly administer the affairs of such trust company and would not knowingly violate or knowingly permit to be violated any of the provisions of the Act under which it was incorporated, entered upon the discharge of his duties as such director promptly after the respective dates of his election and re-election, and continued to serve as such director throughout his initial term of one year according to the by-laws, and after such re-election continuously down to August 14, 1913. He admits that during his service as such director William J. Banister, James B. Banister, William T. Benjamin, John S. Bell, William Fairlie, Worthington H. Ingersoll (until he ceased to act as director as stated in paragraph 5), William F. Keim, Frederick Kilgus, George E. Krug, Harry W. Foster, Charles C. Lurich, Clinton F. McCord, Harvey Mott, G. Rowland Munroe, William P. Odell, John D. Scarlett, Elmer K. Sexton, Raymond E. Smith and William W. Woodward also acted as directors of such company; but otherwise he has no knowledge or information sufficient to form a belief as to the statements of paragraph 5.

6. He admits that from the time of his first election and qualification as such director down to August 14, 1913, William P. Odell acted as president, William Fairlie acted as first vice-president and Harry W. Foster acted as second vice-president of such Trust Company; but oth-

erwise he has no knowledge or information sufficient to form a belief as to the statements of paragraph 6.

7. He admits that from the time of his first election and qualification as such director down to August 14, 1913, Raymond E. Smith acted and served as secretary and treasurer of such Trust Company; but otherwise he has no knowledge or information sufficient to form a belief as to the statements of paragraph 7.

8. He admits that the by-laws of the Roseville Trust Company were duly amended on January 11, 1910, so as to increase the number of the executive committee from 6 to 8, and he admits that on January 9, 1912, the board of directors of the Roseville Trust Company elected the persons named in paragraph 8 (except Harvey Mott) as an executive committee for the term of one year each according to the by-laws; that each member of said committee duly qualified as such and entered upon his duties as such promptly after his election and continued to serve during the term for which he was elected, except that Worthington H. Ingersoll ceased to act as stated in said paragraph; that on January 14, 1913, the same gentlemen (except Worthington H. Ingersoll and William W. Woodward) together with Harvey Mott were elected an executive committee for the term of one year each according to the by-laws; that each member of said committee duly qualified as such and entered upon his duties as such promptly after his election and continued to serve without interim down to August 14, 1913; but otherwise he has no knowledge or informa-

tion sufficient to form a belief as to the statements of paragraph 8.

9. As to the statements of paragraph 9, he has no knowledge or information sufficient to form a belief.

10. He denies that any losses of the Roseville Trust Company were brought about or its failure or insolvency occasioned by any neglect or failure on his part to perform faithfully and diligently his lawful duties as director of said company; and otherwise he has no knowledge or information sufficient to form a belief as to that allegaments of paragraph 10.

11. He admits that it was his duty generally to perform faithfully and diligently his duties as director of the Roseville Trust Company during the time he was such director as charged in paragraph 11; but otherwise he denies said paragraph and says that the same does not set forth the duties of directors of trust companies according to the legal effect of the laws and documents therein mentioned.

12. He denies paragraph 12, so far as he is concerned; and as to the other directors of said Trust Company he has no knowledge or information sufficient to form a belief as to that allegations thereof.

13. He denies paragraph 13 so far as he is concerned, except that he admits that during the time he was director of the Roseville Trust Company, the board of directors employed Raymond E. Smith as secretary and treasurer of said Trust Company, A. Randolph Jennings and Wil-

liam J. Thompson as tellers, and Charles Mindnich as bookkeeper of said trust company, and that he believes said Smith proved to be dishonest; but of any dishonesty of said Smith this defendant had no knowledge and in the exercise of reasonable diligence would have acquired no knowledge down to the time of the closing of said Trust Company.

14. He denies that during the time he was director of the Roseville Trust Company he had any knowledge that Raymond E. Smith was engaged in the business enterprises mentioned in paragraph 14—the only personal and individual business in which this defendant knew that said Smith was engaged in was a small interest in the West Side Garage and he denies that he at any time knew or was informed that said Smith was a man of little or no means or could not honestly have come by funds sufficient to provide capital for the said individual enterprise in which alone this defendant had knowledge said Smith was engaged.

15. He has no knowledge or information sufficient to form a belief as to the alleged thefts of money and other property of the Roseville Trust Company mentioned in paragraph 15, as more particularly and fully described in Exhibit E annexed to the bill of complaint; but as to any failure of duty on his part with respect to said alleged thefts, he denies said paragraph.

16. He has no knowledge or information sufficient to form a belief as to the alleged overdrafts mentioned in paragraph 16 some of which are stated to be described in Exhibit F annexed to

said bill of complaint; but as to any failure of duty on his part with respect to such alleged overdrafts he denies said paragraph.

17. He has no knowledge or information sufficient to form a belief as to the alleged improper payments out of the funds of said trust company mentioned in paragraph 17, some of which are stated to be described in Exhibit G annexed to said bill of complaint; but as to any failure of duty on his part with respect to said alleged improper payments he denies said paragraph.

18. He has no knowledge or information sufficient to form a belief with respect to the allegation of paragraph 18 that on and after January 1, 1913, and continuously down to August 14, 1913, the amount of available funds on hand in said trust company was less than 15 per centum of immediate demand liabilities of said company, and with respect to the allegation that the amount of cash on hand was less than one-fifth of 15 per centum of said demand liabilities; he had during the period mentioned no reason to believe that the facts were as stated in said paragraph, and did believe to the contrary; and he denies that he failed in any duty in the premises.

19. He has no knowledge or information sufficient to form a belief will respect to the allegation of paragraph 19 that new loans not expressly permitted as provided by law were made by the Roseville Trust Company on January 1, 1912, and continuously thereafter down to August 14, 1913, when the available funds of said company were below 15 per centum of its immediate liabilities; he denies that he failed to perform any duty

in the premises, and denies that he had any knowledge or reason to believe at the time of any such loans, if such there were, that the situation of the trust company was as stated in said paragraph.

20. He denies the allegations of paragraph 20 so far as the same relate to him or to his conduct as a director of the Roseville Trust Company; and so far as they relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

21. He denies the allegations of paragraph 21 so far as the same relate to him or to his conduct as a director of the Roseville Trust Company; and so far as they relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

22. He denies the allegations of paragraph 22 so far as the same relate to any knowledge or notice chargeable to him as director of the Roseville Trust Company of any matter or thing which should have called to his attention as such director in the exercise of ordinary business care and judgment any improper practice or irregularity in the conduct of the affairs of said company; and so far as the allegations of said paragraph relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

23. He denies the allegations of paragraph 23 so far as the same relate to any knowledge or notice chargeable to him as director of the Roseville Trust Company of any matter or thing

which should have called to his attention as such director in the exercise of ordinary business care and judgment, any improper practice or irregularity in the conduct of the affairs of said company; and so far as the allegations of said paragraph relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

24. He has no knowledge or information sufficient to form a belief with respect to the allegation of paragraph 24 as to the banking reputation and record of Raymond E. Smith at the time he was first taken into the employ of the Roseville Trust Company, but he says that during all the time this defendant was a director of said company he believed such reputation and record to be good. He has no knowledge or information sufficient to form a belief as to the sending of the alleged letter of May 14, 1909, part of Exhibit I annexed to the bill of complaint, or whether or not it was discussed by the directors of said company in office in 1909 or what was done by said Smith or the said directors by reason of said letter. He has no knowledge or information sufficient to form a belief as to the other alleged letters set out in Exhibit I. The only one bearing date during the time he was a director of said company is the one dated October 28, 1912, and at the date of that letter and for weeks thereafter he was very ill and unable to attend to or perform any duty as director of said company—he being in fact absent from the city at that time. He therefore was not present at any meeting of the board of directors of said company at which said letter was presented or discussed, nor was it in

any way brought to his attention. It will be noticed that in the alleged letter of January 10, 1913, from the president of said company to the Commissioner of Banking and Insurance the last paragraph is as follows: "I have submitted your letter" (being the letter of October 28, 1912) "to every director of the board with the exception of two who are both out of town and have been for several weeks. Upon their return, however, I shall be very much pleased to submit your communication to them." This defendant was one of the two directors mentioned in said last paragraph as being out of town, which was the fact. He remained absent from Newark and from New Jersey until about January 22, 1913, and the communication referred to was never submitted to him.

25. He admits that in 1912 (he says by appointment in January of that year) the persons named in paragraph 25, including this defendant, all being directors of the Roseville Trust Company, were, pursuant to the statute under which said company was incorporated, appointed an examining committee with the duties prescribed by said statute. He does not know what examination was made by said committee as of the 14th of December, 1912, for the reason that at the time of the alleged examination and for many weeks prior and subsequent thereto he was very ill and unable to perform any duties as director of said company or of said examining committee —being in fact absent from the State during all that time. He states, however, that the other members of the examining committee made a

written report of an examination as of December 14, 1912, to which reference is hereinafter made.

26. He admits that at the regular meetings of the board of directors of the Roseville Trust Company at which he was present, Raymond E. Smith distributed to the directors then and there present supposed statements of the condition of the Roseville Trust Company on the dates of said meetings, purporting to show the amounts and general items of assets and liabilities, and in particular purporting to show the amount of funds of said company on deposit with other banks. He has no knowledge or information sufficient to form a belief whether such statements were in any instance fictitious; but he says that he believed them to be true. He does not know what statements were distributed by said Smith to the executive committee of said company at its meetings, but says that the statements submitted to the board of directors at the meetings at which he was present by the executive committee showed the trust company to be in a satisfactory condition, and he submits that he was not called upon as a part of his duty as director of said company to verify the statements made to the board of directors by said Smith or by the executive committee. He has no knowledge or information sufficient to form a belief as to the allegations of said paragraph so far as they relate to the other directors of said company.

27. He has no knowledge or information sufficient to form a belief as to the allegations of fact of paragraph 27, but he says there was nothing in any report made by Raymond E. Smith at any

meeting of the board of directors of the Roseville Trust Company at which he was present that awakened any suspicion in his mind that such report was not true or should have led him to make any investigation thereof. He has no knowledge or information sufficient to form a belief as to the allegations of said paragraph so far as they relate to the other directors of said company.

28. He denies paragraph 28 so far as the allegations thereof relate to him or to his conduct as a director of the Roseville Trust Company; and so far as they relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

29. He denies paragraph 29 so far as the allegations thereof relate to him or to his conduct as a director of the Roseville Trust Company; and so far as they relate to the other directors of said company he has no knowledge or information thereof sufficient to form a belief.

30. As to the statements of paragraph 30 he has no knowledge or information thereof sufficient to form a belief.

31. He believes the statement in the bill of complaint of the dividends declared while he was a director of the Roseville Trust Company to be correct, but prays reference for greater certainty to the records of the company. He had no knowledge, information or belief that the dividends declared during the time he was a director of said company were in violation of law or declared or paid on any date when no profits had been earned

and when there was no surplus of assets over and above the amount of liabilities of said company, or when the total of the liabilities and capital stock of said company exceeded in amount its assets at a reasonable valuation; but on the contrary he had reason to believe and did believe that said dividends were properly declared and paid.

32. As to the statements of paragraph 32, he has no knowledge or information thereof sufficient to form a belief.

33. He denies that he is in justice or equity obliged to pay to said complainant or the Commissioner of Banking and Insurance any money whatever, and admits that he has refused to make any such payment. He has no knowledge or information sufficient to form a belief as to the liability of the other defendants named in paragraph 33, except that he believes that Raymond E. Smith is liable to make some payment, but to what extent he has no knowledge.

And this defendant further answering says that during all the time he was director of the Roseville Trust Company, except when incapacitated by illness, he performed his duties as such director to the best of his ability; that he did, so far as the duty devolved on him, diligently and honestly administer the affairs of said trust company and did not knowingly violate or knowingly permit to be violated any of the provisions of the Act under which it was incorporated. He attended every meeting of the directors that was held in 1912 down to and including the October meeting. At each directors' meeting the minutes

of the meetings of the executive committe held in the interval since the last directors' meeting were read and approved. These minutes recited the action of the executive committee in full detail, and there was nothing to indicate to this defendant any irregularity, illegality or negligence in such action, nor did anything occur at any or either of the directors' meetings to awaken suspicion in the mind of this defendant that there was anything wrong with the company. This defendant was never a member of the executive committee, and during 1912 was only once required as a member of the examining committee to examine into the condition of the company. He participated in such examination on April 11 and 12, 1912, and such examination was careful and thorough, and nothing to awaken suspicion was discovered. Said committee on May 8, 1912, made a verbal report to the directors, which was afterwards reduced to writing and signed by this defendant and other members of the committee, and on June 12, 1912, was read at the directors' meeting held that day, and ordered spread upon the minutes. This defendant prays that the same may be produced and proved and submits that it will show that he thoroughly performed his duty as a member of the examining committee. In October, 1912, this defendant fell ill and was unable to attend any directors' meeting until the following February. He was unable to participate in the examination of the affairs of the company that was made in December, 1912, and did not sign the report thereof. A report signed by all the other members of the committee except this defendant was

presented at the meeting held February 11, 1912, was read, approved and ordered spread on the minutes. There was nothing in this report to awaken any suspicion in the mind of this defendant that anything was wrong with the company. Some unimportant matters were criticised by the committee and were referred by the board to the executive committee to report at a later meeting of the directors, but no report with respect thereto was ever made. This defendant attended the meetings of the directors held March 12, April 8, June 10 and July 8, 1913. At these meetings the minutes of the executive committee were read and approved. Nothing in these minutes or in the action taken at any of the directors' meetings which he attended awakened any suspicion in the mind of this defendant that there was anything wrong with the company. No examination by the agents of the commissioner of banking and insurance that was ever brought to the knowledge or notice of this defendant disclosed anything objectionable in the management and conduct of the company, and this defendant was completely surprised when on August 13, 1913, the bank was closed by said commissioner.

And this defendant further answering says that he had no knowledge or information of any facts that would lead him to suspect that his colleagues in the board of directors or the officers or employees of the company were dishonest or incompetent; but on the contrary he believed and was justified in believing that all were both honest and competent and that the affairs of the bank were being properly administered, and he submits that he had a right to rely on this belief

and on the truth of the information imparted to him at the meetings of the directors at which he was present.

And this defendant submits that he has done nothing and omitted nothing that he was called upon to do to warrant any claim of liability against him on the part of the complainant; and prays to be hence dismissed with his costs.

COLLINS & CORBIN,
Solicitors for and of
counsel with said defendant.

Replication on Answer of Edward D. Dunn

(Filed August 20, 1915)

IN CHANCERY OF NEW JERSEY

ROSEVILLE TRUST COMPANY, Complainant, vs. HARVEY MOTT, *et al*, Defendants.	On Bill

The complainant joins issue on the answer of the defendant, Edward D. Dunn.

ROGER HINDS,
Solicitor of Complainant.

Answers of Defendants Harvey Mott, William F. Keim, G. Rowland Munroe and William T. Benjamin

The answers of the defendants Mott, Keim, Munroe and Benjamin were substantially to the same effect as the answer of the defendant Charles C. Lurich given above in full.

Issue was joined upon such answers of said defendants.

Opinion of Stevens, V. C.

(*Filed June 10th, 1919*)

IN CHANCERY OF NEW JERSEY

Between THE ROSEVILLE TRUST COMPANY, Complainant, and HARVEY MOTT and others, Defendants.	On Bill, etc.

Mr. Roger Hinds and Mr. Edward C. Clark (of New York) for complainant.

Mr. Otto Stiefel for Charles C. Lurich, *et al.*

Mr. Gilbert Collins for Edward D. Dunn.

Mr. Abram H. Cornish for William P. Benjamin.

Mr. Borden D. Whiting for Harvey Mott.

Mr. Scott German for William F. Keim.

Mr. Jerome D. Congleton for Harry W. Foster.

Mr. John W. McGeehan, Jr. for John B. Scarlett.

Mr. G. Rowland Munroe, *pro se.*

Mr. Wm. F. Delaney for defendant, Bataille.

STEVENS, V. C.

This is a suit brought by the Commissioner of Banking and Insurance in the Company's name against the directors of the insolvent Roseville Trust Company to subject them to liability because of their negligent conduct of its business.

The company was organized in July, 1908. It commenced business on December 1, 1908. On August 13, 1913 the Commissioner of Banking, concluding that it was unsafe for the company to continue, took possession of its property and assets under the authority conferred by the Act Concerning Trust Companies (Com. Stat. p. 5654) as amended by the act of 1913 (Laws 1913, p. 282).

As of that date, Mr. Vredenburgh, the Commissioner's Examiner found that on the face of the general ledger the liabilities of the company appeared to be $985,541.05, a figure which included the capital stock, ($100,000) and that the resources appeared to be $985,420.92. On that day, however, had the ledger been properly posted, the liabilities would have appeared to be $1,237,816.11, and the deficit, $393,848.05. But this would not have represented the true deficit for the books, other than the general ledger, misrepresented the total deposits, which were much greater in amount than the books showed, while

the assets were over valued. The bill charges a dificit exceeding $600,000.

It is unnecessary now to specify with particularity what was realized from the assets. It is enough to say that the Commissioner obtained by sale or otherwise $657,437.59. He compromised with nine of the directors, *viz.* Odell, Sexton, Kilgus, McCord, Woodward, Fairlie, Bell and William and James Banister; and received, in cash, from eight of them $86,703.11. Three of them surrendered claims against the company amounting to $53,796.89.

This gives a general view of the situation. The present suit is brought against those of the directors who have not compromised. Speaking generally, the losses are of two kinds. First, those arising from bad debts. Smith, the Treasurer, and occasionally the directors themselves lent to persons or corporations who, by reason of their insolvency cannot now be made to pay. Second, those arising from abstractions or wrongful applications of the company's money by Smith. These abstractions represent the greater part of the deficit, and he continued to make them without discovery, for about two years.

The claim to hold the directors liable for Smith's acts is two-fold. First, that almost from the beginning they were advised that he was not to be trusted and that they continued nevertheless to trust him. Second, that the defalcations would have been discovered had due care been taken to examine the books and accounts and to supervise Smith's acts.

The first contention lies at the foundation of the case and colors the whole of it. The facts

upon which it is based are the following. The company was organized to do business in that part of Newark commonly called Roseville. Mr. G. Rowland Munroe was appointed by the Organization Committee, to inquire about Mr. Smith, who had been brought to its attention by Mr. Bryan, a National Bank Examiner. Smith was then Assistant Cashier of the Second National Bank of East Orange. Mr. Munroe saw Mr. Calhoun, the attorney for that bank, and also three other gentlemen, one a lawyer, one, the owner of the Second National Bank building, and the third, one of its directors. He does not testify that he saw any of the officers of that bank. This was an ommission of some importance in view of the fact that he was, shortly after Smith's appointment, told by State Bank Examiner Appleton that it was rumored that, in the words of Mr. Odell, there "had been fault found up there about him," or, as Mr. Munroe seems to admit that "his record had been bad."

On November 30, 1908, the directors met, organized and elected Smith Secretary and Treasurer. The first examination of the company by the Banking Department was made by Mr. Appleton in March following. He reported to Mr. Lewis, then Commissioner of Banking, who thereupon wrote as follows:

"May 14, 1909.

William P. Odell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

Dear Sir:

The report on the official examination of your company as of March 11th, last, which recently came to hand, shows a condition of affairs which is by no means satisfactory to this Department. The most serious matter is the use by the Treasurer, Mr. Smith, of the Company's funds, without the knowledge of the other officers or directors, for the benefit of one of his friends. The facts are reported to be as follows:

On February 6th, last, Mr. Smith drew a draft on the New York State National Bank of Albany, to the order of Charles A. Nones, for $1,350, which was endorsed by the latter and given by him to one Edward G. Johns, said to be a New York broker, who deposited it to his (Johns) credit in the National Copper Bank of New York. The account of the New York State National was not credited with this draft until a week later, February 13th, when two checks were drawn on the Philadelphia National Bank, of Philadelphia, one for $1,350 and the other for $1,000. The account of the New York State National was then credited with the $1,350, and an additional $1000 in cash was handed to Nones. For neither of these

checks, of $1,350 and $1,000, drawn on the Philadelphia National Bank, was there any credit made on the books of your company, but the total amount, $2,350, was charged to the Philadelphia National, thus covering the credit of $1,350 to the account of the New York State National and the handing out of the $1,000 in cash, hence at the date of the examination the company's account with the Philadelphia National showed a shortage of $2,350.

The examination was made on Friday, March 12th, but no word was dropped by Treasurer Smith of this shortage at that time, although he evidently realized that it must come out in the course of the examination. On Sunday, March 14th, Mr. Smith called the Examiner up at his home by telephone, and made arrangements to see the latter the following Tuesday evening, March 16th, when he confessed the whole matter to the Examiner and stated that he had made a similar confession to yourself and Mr. Munroe, a director and attorney of the bank, on the Saturday following the examination. The explanation offered by Mr. Smith was that Nones, a friend of his, had come to him on February 6th, stating that he must have $1,350, and that he, (Mr. Smith) had advanced Nones the money in this manner, taking the note of the latter for the amount. As Nones already had in the bank $6,000 of paper, of which only $3,500 was known to any of the directors of the company, the

other $2,500 having been put in by Treasurer Smith without reporting it to the Board or Executive Committee, he, (Mr. Smith) therefore did not put the $1,350 through as a loan, but allowed it to stand without any entry upon his books, thus making a deficit of $1,350 in the company's Albany account.

On February 13th, one week later, Nones again came to Mr. Smith and stated that he could not pay the $1,350 as agreed, but that he must have another $1,000, and in order to accomplish this Mr. Smith drew the two drafts above mentioned, for $1,350 and $1,000, on the company's Philadelphia correspondent. (The Philadelphia National Bank) giving Nones the $1,000 in cash, and with the other draft, $1,350, crediting the Albany account, so that all the shortage would be in one account. Mr. Smith then received another account from Nones for the $1,000, which he also failed to put through. This left a shortage in the Philadelphia National Bank account from that date, February 13th, to the date of the examination, of $2,350, which difference showed in the Examiner's reconcilement of the account with the Philadelphia National for the 11th of March, the date of the examination.

The reason for transferring this shortage to the Philadelphia National Bank is apparent when it is stated that the company has no regular draft book on that bank (it has such a book in the cases of

its other correspondents), only ordinary bank drafts being used for the purpose of drawing on Philadelphia, the stubs not being filled in, hence there were no tell-tale stubs to show these two transactions.

On April 6th, when the Examiner returned to the Trust Company's office for the purpose of making certain verifiications, all the drafts on the various correspondence being then on hand to March 31st, a full comparison of all the paid drafts was made with the stubs of the check books, where there were any such, and with the general cash book, to see the various dates that the credits were made to the banks upon which the drafts were drawn. This led to the discovery that the above transactions with Nones were not the first of the kind, but that similar transactions had occured in December and January. Another peculiar feature discovered was that where such transactions had been made the stubs of the checks were blank, having neither name, account nor date. The Examiner also noted that those checks all found their way to the above mentioned Edward G. Johns, said to be a broker.

No mention was made by Treasurer Smith of these earlier transactions to either the officers of the company or to the Examiner, and when his attention was called to the same he admitted the fact and said that previously Nones had always made good, while this last time he had not.

Taking the various matter together they seem to disprove the statement of Treasurer Smith that he had no interest in any of the transactions and that they were all made out of friendship for Nones. But be this as it may, no sufficient excuse can be offered by Mr. Smith for his action which seems indefensible and deserving of the strongest condemnation. No confidence can be placed by this Department in any official who would be guilty of this sort of thing, nor does he seem worthy of the confidence of the directors of the institution. He should be required to resign and cease his connection with the company. The Examiner states that the matter is known only to yourself and Directors Foster and Munroe, and that at the interview he had with you and Director Munroe, at your home, on the evening of March 18th, the matter was thoroughly gone over and that he informed you and Director Munroe that the facts must be made known to every Director, which I assume has been done."

On receipt of this letter, which, it is admitted, contains an accurate statement of the transactions herein referred to, the directors on June 21, 1909, held a special meeting. Smith tendered his resignation and a vote was had on its acceptance. Three ballots were taken. On the first two, there were two votes cast in favor of acceptance, one of them by Mr. Odell, the President, and thirteen against it. On the third ballot the vote was unanimously against acceptance

and Smith continued to be Treasurer until the close of the institution.

In accordance with the Commissioner's request, Mr. Odell forwarded to him a copy of the minutes signed by all the directors except Mr. Munroe, who was abroad. The Commissioner acknowledged its receipt and said it would have his consideration. He added "I will say now however that I emphatically disapprove of the decision of the Board in the matter."

The question to be determined is whether the acts set forth in the letter were merely irregular or whether they showed Smith to be untrustworthy. Sction 15 of the by-laws provides that the Treasurer, "shall sign all checks, drafts, notes and orders for the payment of money and pay out or dispose of the same under the direction of the president or board of directors, taking proper vouchers for such disbursements and shall render to the president and directors at the regular monthly meetings of the board or whenever they may require it an account of all his transactions as treasurer."

Section 17 provides that the Executive Committee shall superintend and advise all investments to be made with the funds of the company. The Executive Committee may in its discretion authorize the President to make investments without previously consulting the Committee.

Now the Commissioner's letter shows that on February 6th, 1909—that is two months and six days after the bank had begun business—Smith lent $1,350 to his friend Nones. He did not note the transaction on the stub, did not enter it in the books, and did not credit it to the bank on which

the draft was drawn until he had made the amount good by a draft on the Philadelphia Bank one week later, which also remained uncredited. "The reason for transferring this shortage to the Philadelphia National Bank," says the Bank Commissioner, "is apparent when it is stated that the company has no regular draft book on that bank (it has such a book in the case of its other correspondents), only ordinary bank drafts being used for the purpose of drawing on Philadelphia, the stubs not being filled in, hence there were no telltale stubs to show those two transactions."

It thus appears that without consulting Mr. Odell, who called at the bank daily, he first lent $1,350 contrary to the bylaws, and then, this not being paid, $1,000 more, and kept the shortage off the books until the Examiner came on March 12. Then, fearing discovery, he confessed the matter.

But this was not all. The Commissioner in his letter says: "This led to the discovery that the above transactions with Nones were not the first of the kind, but that similar transactions had occurred in December and January, and that where such transactions had been made, the stubs of the check books were blank, having neither name, account or date."

Now, it seems to me, that to call such transactions mere irregularities is impossible. Had Smith forgotten to enter a single draft on his books after having been authorized by the President or Executive Committee to make it, that would have been an irregularity, but he lent without authority; concealed what he lent, and

falsified the accounts until discovery was imminent. He did this several times within a few weeks after the company commenced business.

It is moreover admitted that when the Bank Examiner communicated to Mr. Odell and to Mr. Munroe what he had learned, he told them of rumors as to Smith's record. Mr. Munroe testified that he investigated it but he does not tell us how or what he learned, if anything. He says that whatever Appleton told him he reported to the Board. When the Board met on June 18, 1909 the minutes state that the directors thoroughly discussed the Commissioner's letter, but they say nothing about any investigation of the rumors. In view of the fact that Smith's conduct had been so reprehensible from the start, it is quite surprising that it was not thought advisable to follow up the rumors in order to find out what, if anything, Smith had done to give rise to them. The information came from a man in daily contact with bankers.

The argument alvanced on behalf of the Board is that it was composed of business men of excellent reputation, and perfectly honest in all that they did; that they were unwilling, without necessity, to cast a shadow upon their undertaking at its start; that, to quote counsel's argument, "the transaction was an isolated one—not involving moral turpitude; that it must have appeared to them more like an irregularity in banking matters than an absolute wrong, and that for judgment honestly exercised no action will lie." It is undoubtedly true that the directors who so acted were, with one exception, men of business experience and perfectly honest. But

this would not exonerate them, if they with the best of intentions knowingly retained a dishonest man. The institution was small. Its whole working force consisted of Smith himself, a teller, a book-keeper, a stenographer and a janitor; all subject to Smith's direction. If the directors were going to entrust the money of the depositors (over 3000 in number in 1913) to the keeping of one man, that man should, certainly, have been above suspicion. Now what did the directors know? They knew that Smith had lent money in disregard of the bylaws; that he had failed to advise with Mr. Odell, whom he saw daily; that he had failed to make the proper entries, not from forgetfulness or carelessness, but because he intended to conceal what he had done; they knew (for they were so informed by the examination and the Commissioner's letter) that he had done it more than once, and they knew, too, that in doing so, he had, necessarily, either falsified the general ledger or caused it to falsified. The falsification of books or the making of a false statement of facts is a "high misdemeanor" under Section 17 of the Trust Companies Act. Under these circumstances had they given the matter real consideration it seems to me that they would have come to no other conclusion than they had in their employ a man who was willing to deceive them. The general ledger which he had control of and in which the account of the depository banks was kept, showed each day for more than a month the aggregate balance standing to the company's credit to be $2,500 more than it really was. The minutes of the Executive Committee show that the total deposits were reported by him weekly.

Now the cases hold that directors are guilty of a plain breach of duty if they retain in responsible position a man who has shown himself to be unworthy of trust. Scott V. National Bank, 72 Pa. St. 471. Third Nat. Bank v. Boyd 44 Ind. 247. Cutting v. Marlos, 73 N. Y. 454. Prather v. Kean, 29 Fed. 498, 137, U. S. 604. Gibbons. v. Anderson 80 Fed. 345. Rankin v. Cooper, 149 Fed. 1010. Williams v. Brady, 221, Fed. 118. If Smith had deceived them once what sufficient reason had they to suppose that he would not do so again. They not only retained him, but they did so against the warning of the Commissioner of Banking who was vested by the statute with power of supervision, (Comp. Stat. 5662, sec. 21) though not of removal. Says M. Justice McKanna, speaking of the Federal Comptroller in Thomas v. Taylor, 224 U. S. 73, "disregard of the direction of the officers appointed by the law to examine the affairs of the bank is a violation of the law. Their directions must be observed. Their function and authority cannot be preserved otherwise and be exercised to save the bank from disaster and the public who deals with them and supports them from deception."

It cannot be overlooked that the directors were without banking experience. New to the business, it was all the more incumbent upon them to heed the advice of the officer to whom the law had committed the duty of supervision. I am unable therefore to agree with the argument of counsel that the vote of fifteen good business men to retain Smith, is the best evidence of what it was reasonably prudent and expedient to do under the circumstances. To hold that a

mere vote is the best evidence of prudent action is practically to hold that, given an honest board whose members possess a fair amount of intelligence the court is precluded from deciding otherwise. This is not the language of the cases. The directors may condone mere irregularities, but they cannot condone moral obliquity without rendering themselves liable for the consequences.

Smith's conduct proved that he was capable of deception. One would have supposed therefore, that if he was to be retained, some check would have been imposed upon his action. Counsel argue that any action taken to that end would have shown lack of confidence and would have condemned their vote. This shows the difculty of their position. In Campbell v. Watson, 17 Dick, 427, Pitney, V. C. quotes with approval the following passage from Percy v. Millaudon, 8 Mar. (N. S.) 68. "The duties of directors are those of control, and the neglect which would render them responsible for not exercising that control properly, must depend on circumstances, and, in a great measure, be tested by the facts of the case. If nothing has come to their knowledge to awaken suspicion of the fidelity of the president and cashier, ordinary attention to the affairs of the institution is sufficient. If they become acquainted with any fact calculated to put prudent men on their guard, a degree of care commensurate with the evil to be avoided is required, and a want of that care certainly makes them responsible." In the present case, assuming it to have been due care in the first instance, to have given the treasurer unlimited

opportunity to draw upon all the funds of the institution, certainly when it was found that, from the very beginning, he had abused his power, ordinary prudence would have suggested that restraints be placed upon his action. None were even the subject of consideration. The evidence shows that, as time went on, Smith was allowed a greater degree of control. At first Thompson kept the general ledger. After a time, Smith was allowed to keep it, and by keeping it, to acquire greater facilities for deception.

I think it impossible to avoid the conclusion that by retaining Smith and allowing him, without check or restraint, to dispose of the moneys of the institution, the directors made themselves responsible for the consequences of his acts.

The act concerning Trust Companies, (Comp. St. 5654 s. 12) provides that "each director of every trust company when elected shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such trust company and will not knowingly violate or knowingly permit to be violated any of the provisions of this act."

It is contended that the directors and two of their Committees—the Executive and the Examining Committees—failed diligently to administer the company's affairs. I will first take up the Executive Committee.

The by-laws provide (s.17) that the Executive Committee "shall superintend and advise all investments, but may in its discretion authorize the President to make investments without previously consulting it." This by-law was dis-

regarded from the beginning. The Executive Committee authorized some of the loans, but most of them were made, not by it or the President but by Smith. On November 30, 1908, the minutes of this Committee state that it was moved "that the Treasurer be empowered to make loans up to $1,000 without consultation." He not only did this, but as early as June, 1909, he began, without any formal authorization, to make larger loans. We find in the minutes of June 29, 1909, for instance, a statement that the loans of the week were approved and among them one of $1,100 and one of $2,500. After they were made they were submitted to the Executive Committee at their monthly meeting, and approved, the approval being noted thus: "Bills purchased during the weeks were approved." The money was so recklessly lent that an enormous loss resulted. Mr. Vredenburgh, the State Examiner, found that the face value of the notes and loans ($623,585.65) when the company closed its doors, was $181,603.94 greater than their fair value. Had the Executive Committee passed upon these loans in the first instance such a loss would hardly have been possible. Its collective judgment, based upon personal knowledge and proper inquiry would have been quite a different thing from its perfunctory approval of what Smith had already done.

Not only was there a failure to comply with the by-laws. The statute was disregarded as well. The Trust Company Act (s. 6) authorizes the Trust Company (*inter alia*) "to purchase, invest in and sell stocks, promissory notes, bills of exchange, bonds and mortgages and other

securities." In section 7 it provides that "no corporation created under this act shall have power to discount commercial paper or *to make loans upon bills, notes or other evidences of debt,* (except to a municipality) unless the same shall be secured by mortgage upon lands or by other securities, the actual market value of which other securities shall at all times exceed by at least ten per centum the amount loaned upon the same."

The evidence shows that the company made it their principal business to discount or lend money upon paper. Some of this had only one name, but the greater part of it was endorsed. By the statute, whether endorsed or not it all stood upon the same footing. In Durant v. Banta, 3 Dut. 624, the case relied upon by defendants, it was said that "to lend money on the security of a note is one thing; to sell a note is another." There the Court was considering whether a note *on which the payee had acquired a legal right to sue the maker* could be endorsed by him *generally* and then sold without rendering the transaction usurious; and, reversing the prior decision in Freeman ats. Britton, the Court of Errors held that such a transaction might, as between payee and purchaser, be a loan or a sale according to the real meaning and intention of the parties, and that this was to be determined by the evidence. The distinction is between paper on which the payee has acquired a legal right to sue—paper which by the express terms of the Trust Companies Act the company has the right to buy and paper on which no right to sue arises until the company has acquired it, their right to

sue arising and arising only out of the fact that they have lent money upon it. Having lent money in disregard of the statute and by-law the directors as a body are responsible for any resulting loss, for they knew and approved of the action of their committee in this regard. Citizens Loan Assoc. v. Lyon, 2 Stew, 110. Williams v. McKay, 13 Stew. 189.

I now come to the Examining Committee. Section 14 of the Trust Companies Act provides that "the Board of Trustees of each Trust Company shall from time to time appoint from its members, an Examining Committee whose duties shall be to examine the condition of the Company at least once every six months or oftener, if required by the Board; and such committee shall after each examination forthwith report to the Board, giving in detail all items included in the assets of the Trust Company, which they have reason to believe are not of the value at which they appear on the books and records of the company, and giving the value in their judgment of each of such items and the Board shall cause said report to be recorded in the minute books of the company." The statutory duty imposed upon them by their oath and by this section of the Act was to examine diligently and honestly. The Committee by accepting the task undertook to use as much diligence and care as the proper performance of their duty required. Campbell v. Watson, 17 Dick, p. 442. If its members were not already sufficiently familiar with the books to make an intelligent examination of them, it was their duty to become so. Not an examination such as an expert accountant would have made,

but an ascertainment of the assets and liabilities, as far as ascertainable by careful work, such as they were able to do. The assets consisted chiefly (1) of cash in the vaults of the company; (2) of the negotiable paper, misnamed on the books "bills purchased," (3) of collateral and other loans, and (4) of amounts that were due to the bank from other depository banks. The first three were tangible and could be counted and examined. The amount due from other banks could be ascertained by inquiry of those banks. As to assets such as these, the object of the examination was to ascertain, first, whether they corresponded in amount with the statement of them on the books and, second, whether the individual items had the value attributed to them.

Pitney, V. C., himself an experienced banker, in Campbell v. Watson (*supra*) p. 416 said: "in making the examination it is necessary to ascertain the amount of each item without the aid of the ledger with which they are to be compared and independent of the books. To rely upon the books alone for that purpose is simply absurd. The cash and bills discounted and other tangible assets must each be seen, handled, inspected and counted, and the amount due from other banks must be ascertained in some manner equally efficient." The items must not only be handled and counted, they must, under the Trust Companies Act, be valued. Section 14, makes it the duty of the Examining Committee to report to the Board giving in detail all items included in the assets which they have reason to believe are not of the value at which they appear on the books and giving the value in their judgment of

each of such items." Unless the examination of the assets embraces all this it is not "diligent."

As to the liabilities, the case is somewhat different. Here the books must be taken as they stand. There is nothing wherewith to compare them. They may be compared with each other, but the result of the most careful examination is not conclusive. The case in hand is an illustration. The evidence is that the Treasurer, who not infrequently took the place of the teller, altered the deposit slips and credited the customer with less than he had handed in over the counter. Here, it is obvious, the books would fail to indicate the true amount standing to the depositor's credit. Then again, the Treasurer repeatedly cashed checks whose drawers had nothing or very little to their credit, and either made no note or a false note of the payment; keeping the checks in a receptacle to which no one but himself had access. The committee had no means of ascertaining what checks had been cashed except as the books showed and no way of ascertaining the amount really due the depositor unless it communicated with him or called in his passbook. It may be doubted whether in the absence of anything calculated to excite suspicion, this duty was imposed upon it. Mr. Cloran, the expert employed by complainant, says that the calling in of pass books might have caused a run upon the company. The fault, in this particular, if fault it was, was rather one of system. One way of meeting the difficulty is that now adopted by many well-conducted banks and trust companies. They send to their customers at stated intervals an account of their balances.

In the case under consideration the committee handled and counted the assets but did not report "the value of such as they had reason to believe were not of the value at which they appeared on the books." This was notably so in the case of the Scarlett note for $10,000, the Miele and Bruno notes of $27,000, the Federici notes of $1,235, and other notes mentioned in the Banking Commissioners letter of October 28, 1912. The duty to report these notes, on which there were heavy losses, was, as I have shown, a statutory one, and inasmuch as the report was to be made to the entire Board and entered on its minutes, not only the Committee, but the Board as a whole, was negligent in not requiring performance.

The Examining Committee was also negligent in its examination of the accounts of depository banks. Of these there were several, two in Newark, one in Albany, one in New York City, and one in Philadelphia, and they often held large balances to the credit of the Trust Company. These credits were a part of the assets, and often a large part. The Trust Company's general ledger stated the amounts. Smith made the entries, and it was the Committee's duty to see that the entries were correct. To this end the Chairman of he Committe was in the habit of writing to the correspondent banks to find out what their balances were as of the day of the examination. Now it is evidene that the balances given by the correspondent banks as of that day might not correspond with the balance appearing in the Trust Company's ledger under the same date; for checks in transit would cause a differ-

ence. These checks might be of two kinds. (1) Checks drawn by the cashier of the Trust Company upon the correspondent banks. These would diminish the apparent balances in the correspondent banks. (2) Checks or drafts held by the Roseville bank and sent for deposit to the correspondent banks. These would, when they reached their destination, increase the balances standing to the credit of the Trust Company.

The Committee were negligent in this. They took Smith's statement as to what these two classes of checks or drafts were, instead of getting a statement of them from the correspondent banks, as they could have done by obtaining a statement not only of the balance on the given day but of the checks and drafts that might have come in three or four days afterward. To rely upon Smith's statements—the statements, written and verbal of the man whose work they were verifying—was, to use the words of Pitney, V. C., in the case cited, speaking with reference to a precisely similar situation, *absurd.*

Now Smith, who was always present while the examinttion was going on, soon found out in what respect the Committee's inquiry was defective. To cover up his abstractions or some of them, he entered a balance in the general ledger such as would for the time being serve to conceal them and he then explained to the Committee that the balance thus entered differed from the balance reported by the correspondent banks because of the checks in transit. It was here that the Committee's examination failed. It did not verify his statement of checks in transit.

It is next contended that the Examining Com-

mittee were negligent in not examining the paying teller's proof-books. It is said that if they had done so they would have discovered an abnormal amount of cash items, so-called, and that their discovery would have led to the discovery of Smith's other methods.

Cash items, or as it is styled in the proof-books, cash itemized, is a technical term and means in banking phraseology, as I understand, notes, checks or memoranda in the paying teller's possession at the close of the day's work, that he, for the time being, treats as cash. They may be items cashed after banking hours or they may be items held for criticism or inquiry. They are of such importance that they are specially mentioned on the printed blank reports furnished by the Banking Commissioner, under the head: "Checks and other cash items." They do not include the checks or bank bills deposited by customers in the ordinary course of business.

In the general ledger kept by Smith, both cash, properly so-called, and cash items were entered as cash. During the last year of the Company's existence the cash items often exceeded $40,000. To anyone casually consulting the general ledger—the book which gave a resumé of each day's work—the showing of cash on hand would therefore be misleading, in the case at hand, not only misleading, but false —for the cash items consisted very largely of worthless paper—paper which Smith had cashed, but not entered on the books, and had therefore, for the time being, to be treated as cash by the teller in order to make his proof book balance. When the Committee was expected—and Smith

was usually informed in advance of its coming—he took these cash items, or such of them as were illegitimate, out of the cash, and then by false entries covered up the abstractions. One way of doing it was the way already referred to—a pretended remittance to a depository bank. When the Committee counted the cash, the cash items had disappeared. They did not show on the teller's proof book for that day, because removed before it was balanced. But the Committee did not examine the proof book, they compared their count of the money with the cash entry made by Smith in the general ledger after their arrival and found it correct. It is claimed that their failure to look at the proof books was negligence. Whether it was or not depends on how far the Committee should have gone in the examination of the books. It will be more convenient to discuss this in connection with what follows.

The Examining Committee are further charged with negligence in not detecting Smith's manipulation of the general ledger. Perhaps the most glaring instance of this occurred in the course of the examination of December 14th, 1912. As already said, the general ledger showed a trial balance for each day's work. It gave the total of the different kinds of assets and of the different kinds of liabilities in separate columns so arranged as to balance. The Committee verified the figures by comparing them with the assets as actually counted and with the liabilities as they were stated in books of original entry. At the time when the December examination began, the collateral loans were truly stated at $51,438, but before the Committee had completed the addition of the column which con-

tained the various assets, Smith, put the figure "one" before the other figures, thus making the collateral loans appear to amount to $151,438. This covered up a deficit of $100,000 and made the debit and credit columns balance. The act was a bold one, for had the Committeeman who performed the addition happened to observe the figures and their connection with the words "collateral loans" it would at once have occurred to him that the collateral loans were overstated, and this would have led to the discovery of the trick. The contention is that the Committee's failure to observe this alteration, and their failure in the case of the other examinations, to notice erasures made with similar intent, was gross negligence. Judging by the result, it would have been better to have taken the books into their exclusive custody while the examination was going on, or, as counsel suggests, to have used their own figures in computing the totals, comparing them, after the computation, with the figures in the ledger. But I doubt very much whether they could be called over-confiding when they assumed that Smith would not be guilty of the crime of altering the books in the short space of time that it took to make the examination. It was suggested that they ought to have compared the figures in the trial balance of December 14th with the figures in the balances of previous days. This too as in the case of their failure to observe the cash items in the proof-books brings up the question as to how far they should have proceeded in the examination of the books generally. The task of the committee as they understood it, was to ascertain the assets and liabilities at the time of the examina-

tion. To have examined the figures in all the books for the whole, or even a part of the preceeding six months would have been the work of an expert accountant and, if not an impossible undertaking for the Committee, would have occupied more of its time than any Examining Committee could reasonably have been called upon to give. It is difficult for one without knowledge of practical banking to say how far such a Committee in a well-conducted institution ought to go. There is no evidence on the subject and perhaps none of any value could be obtained. It is to be noted that this case differs from most of the reported cases to which my attention has been directed. In the Watson case, for example, there was no attempt at supervision or examination. Here there was an honest effort on the part of the committees to do their duty. The Executive Committee met weekly. The Examining Committee met semi-annually and made an examination that seemed to it to be sufficient. They could hardly have anticipated that Smith would manipulate the cash items and alter the books in their very presence and while the examination was going on. At all events, I find difficulty in convicting them of culpable negligence when they assumed that he would not. The observation of Pitney, V. C. in Campbell v. Watson seems to apply. He says: "no one I suppose will go so far as to suppose that any system of supervision practicable at this day will absolutely prevent a dishonest cashier who has charge of the cash of the bank from stealing some of it and stealing it in such a manner that not a shadow of ground would exist for holding the directors liable for the loss."

It would answer no useful purpose to discuss, in detail, the alleged neglect of the Committee to examine the other books and compare them with the general ledger. The observations above made apply to their acts in this respect as well, and whether their examination should have extended to them or not, their liability and that of the directors, as I have found it, would remain unchanged.

Thus far I have discussed this case as it bears upon the liability of those of the directors who were such from the beginning. One of the directors—Mr. Dunn—was elected to the Board in January, 1912, and again in 1913. He was an architect and real estate agent. On the day of his election he was made a member of the Examining Committee. The examination of April, 1912 was the only one that he took part in. The work was divided up among the different members. To Dunn was assigned the task of examining the so-called "bills purchased" in amounts varying from five dollars to five thousand, and aggregating at that time, about five hundred thousand dollars. These he examined and checked up with a typewritten list furnished by Mr. Sexton, the Chairman. Then he examined a bundle of mortgages and found that they were regular in point of form and accompained with proper policies of insurance. A few days after, he went to the Fidelity Trust Company's vault, and with other members of the committee counted the collateral loans. He heard Mr. Sexton read letters received from the depository banks, whose figures tallied with those they had. This completed his part of the work. He did not examine the general ledger or the other books. He

was young and inexperienced, and he was trying for the first time to do the work assigned to him by the chairman, Mr. Sexton. In so far as I have been unable to convict the other and more experienced members of the committee of negligence, I cannot convict Mr. Dunn. And I do not think that he, as a member of the committee, could at that time, inexperienced as he was, be charged constructively with the negligence of Mr. Sexton who had not required from the correspondent banks such a statement as has been mentioned. Besides, it does not satisfactorily appear that at that time (April, 1912) Smith was using the correspondent bank accounts to cover up his frauds. There were discrepancies ($826.74 in the case of the Union Bank and $597.09 in the case of the Irving Bank), but I am unable on Mr. Cloran's evidence alone to conclude that, while small in amount, they were part of an effort to deceive. They might have been susceptible of explanation on grounds consistent with honesty. At that early stage of his abstractions Smith had better and safer ways of covering them up.

Two other examinations were made before the company failed, but Dunn did not take part in them. Sickness prevented him from attending one, and a wedding trip the other.

It is insisted that Mr. Dunn is liable because as a member of the Examining Committee he with the others failed to perform his statutory duty to report to the Board such assets as in the opinion of the committe ought to have been carried at less than their face value. That there were such assets and that they did not report them is indisputable. That any loss resulted

directly from the failure to report is not proven. The entire board knew that the Scarlett and some other loans ought not to have been carried on the books at their face value and if the examining committee had reported the fact, and the report had been entered in the minutes the Board would not have been informed of anything they did not know before. The failure to comply with the state is evidence of negligent conduct on the part of the Committee and of the Board, but does not necessarily increase their liability.

The evidence shows that after Mr. Dunn became a director loans were made when the reserves were depleted and dividends were declared when there was no surplus. It does not show that the directors know this. The argument is that examination would have shown it. But here, as before, we are met with the fact that there was, on the part of directors and committeemen, an honest effort to perform their duties. The Examining Committee, as has been said, met half-yearly and made what they regarded as a sufficient examination. The Executive Committee met once a week and the Directors once a month. There was no such "supine neglect" as appeared in Campbell v. Watson (*supra*). When they lent money and declared dividends, they had before them Smith's weekly statements, their own examinations, the examination of the State Bank Examiners, and their general knowledge of the course of business, and they relied upon them as the basis of their action. I do not think that, under the cases, there was a lack of ordinary care on their part because they went no farther.

Mr. Dunn is liable for loans made contrary to the by-laws and the statute, after he became a director, if any loss resulted therefrom, for the reasons heretofore mentioned.

I do not think it necessary to consider how far the President was in fault in signing the reports prepared by Smith and made to the Banking Commissioner without examination as to their correctness. He has been released. The attesting witnesses have been held on other grounds. At farthest the evidence does no more than show an additional instance of lack of diligence on the part of the president.

The insistence of the defendants is that they have all been released by the legal operation and effect of the releases given to some of their number. On the application to strike out the bill (LaMonte v. Lurich 86 N. J. Eq. 26) the same defence was set up, but on an allegation that did not fully and fairly state the facts. It would indeed have been unfortunate for the parties concerned if, after this prolonged, complicated and costly litigation, it should have turned out that these releases had the effect now contended for. The real question ought to have been determined in advance and to that end the pleader ought to have set forth the facts as they are. The allegation passed upon was this. That Odell and others made partial restitution *** "pursuant to an agreement duly made with said directors on December 10, 1913 and pursuant to the express provisions of the statute, but without prejudice to the causes of action against the other directors as herein alleged." The decision was that the alleged agreement was a covenant not to sue and not a technical release. It now appears that a

technical release was in fact given by the Commissioner of Banking, and the insistence made on his behalf is that other contemporaneous documents so qualify the effect of the release as to make it operative only on those to whom it was given. The facts are as follows:

On December 10, 1913 the Commissioner of Banking entered into a written agreement with the Mutual Bank of Roseville, a corporation that had been organized to take over the property of the insolvent company, wherein it was agreed that, "*subject to the approval of the Court of Chancery*, compromises would be made with nine of the directors, the proceeds of which were to be included among the assets to be sold to the new bank," but that there was excluded from the sale "any right to recover from officers and directors of said Roseville Trust Company on account of the negligence or improper conduct of said officers and directors exclusive of" those with whom the settlements were to be made. The agreement also provided that the Commissioner would institute suits against those not settled with to recover for losses suffered by their negligence.

An application was then made to the Court of Chancery upon notice (*inter alias*) to all the directors to obtain its approval of the agreement pursuant to the provisions of Section 22 of the Act concerning Trust Companies (Laws 1913-283). The provision reads as follows: "For the purpose of executing and performing any of the powers and duties hereby conferred upon him, the Commissioner may in the name of such Trust Company prosecute and defend any and all suits and other legal proceedings and may, in

the name of such Trust Company, execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary to affectuate any sale of real and personal property or sale or compromise or compound, authorized by the Court of Chancery as herein provided."

After a hearing the Court of Chancery authorized the Commissioner "to complete and carry out the compromise and settlements upon the terms and conditions *set forth in the said contract.*" The Commissioner thereupon gave to each director who settled with him a release which, as far as the present question is concerned, was, in terms, absolute. It does not refer to the above-mentioned agreement and it cannot, on the face of it, be construed as a covenant not to sue. The question then is, can it be regarded as such a covenant if taken in connection with the other contemporaneous documents? Perhaps a better way of putting the question would be this. Considering the petition, the order and the agreement, ought not the operation of the release to be restricted to the releasee, who alone is named therein? This question, at least in equity, seems almost to answer itself. If the construction contended for by the defendants should be adopted, the Banking Commissioner would be convicted of having deliberately disregarded the order of this Court. It was a part of the scheme, and so represented to the Court, that the other directors, not settled with, should be sued for their negligent acts. The Commissioner had no authority to release them. By holding that he has not in fact released them no violence is done to the language of the release.

It has full effect, as far as its language goes, for it does not, in terms, purport to extend to, or to give immunity to, anyone but the releasee. If it extends to others it is not because it so states, but by legal construction. The other documents rebut the wider effect ordinarily given to such a paper and show that its operation is to be limited to the releasee only. I know of no rule of law which will prevent the expressed intent of the parties from being carried out. Contemporaneous documents are frequently read together and construed as one harmonious whole. If the order, contract and releases be so read it is apparent that the scheme was that the releases were to affect the releasees only. Such being the case, there is no reason why this Court should now say that the defendants are entitled to an immunity that the Court did not intend and that the Commissioner had no right to give. The case of Murphy v. Penniman 66 Atl. 282 is very much in point.

The briefs discuss that length the question of degrees of responsibility as it was formulated in Williams v. McKay, 46 N. J. Eq. 25. The contention on the part of the defendants Benjamin and others is that the President and Committeemen were more negligent than they were and stood in a higher grade of liability. The corollary drawn is, that if the President and Committeemen were released, the others were, to the extent of their prior liability. In the view that I have taken of that case, the question does not arise. All the directors stood in the same degree of negligence when they retained Smith and when they lent money contrary to the statute and by-laws.

Final Decree

(Filed February 19, 1920)

IN CHANCERY OF NEW JERSEY

Between

GEORGE M. LAMONTE, as Commissioner of Banking and Insurance of the State of New Jersey, in behalf of and in the name of Roseville Trust Company,

Complainant,

against

HARVEY MOTT, CHARLES C. LURICH, GEORGE E. KRUG, EDWARD D. DUNN, WILLIAM T. BENJAMIN, WILLIAM F. KEIM, HARRY W. FOSTER, EMILE C. BATAILLE, G. ROWLAND MUNROE, JOHN B. SCARLETT, WORTHINGTON H. INGERSOLL and RAYMOND E. SMITH,

Defendants.

On Bill of Complaint and Counterclaim. Final Decree.

This cause coming on to be heard in the presence of Roger Hinds, Esq., of counsel with complainant, and Borden D. Whiting, of counsel with the defendant Harvey Mott, Otto A. Stiefel, Esq., of counsel with the defendants Charles C. Lurich and George E. Krug, Gilbert Collins, Esq., of counsel with the defendant, Edward D. Dunn, Abram H. Cornish, Esq., of counsel with the de-

fendant William T. Benjamin, Scott German, Esq., of counsel with the defendant, William F. Keim, Jerome T. Congleton, Esq., of counsel with the defendant Harry W. Foster, William F. Delaney, Esq., of counsel with the defendant, Emile C. Bataille, John W. McGeehan, Jr., Esq., of counsel with the defendant, John B. Scarlett, and the defendant, G. Rowland Munroe, Esq., *per se,* Chester W. Fairlie, Esq., of counsel with William T. Odell, Kate Irvine Fairlie, executrix of the Etsate of William Fairlie, deceased, and Elmer K. Sexton, third parties, defendants to the counter-claim filed herein by said defendant, William T. Benjamin, George W. W. McCarter, Esq., of counsel with Fred Kilgus, third party, defendant to said counter-claim, and Egbert T. Tamblyn, Esq., of counsel with Frances E. Banister, William A. Banister, and Albert L. Banister, executors of William J. Banister, deceased, Clinton F. McCord, James B. Banister and William W. Woodward, third parties, defendants to said counter-claim, (the defendants Worthington H. Ingersoll and Raymond E. Smith not having appeared or answered), and the pleadings having been read and the proofs having been taken and the arguments of the respective counsel having been heard, and the Court having duly considered the said pleadings, proofs and arguments; and it appearing to the Court that the Roseville Trust Company above named suffered losses to the approximate amount of $575,000.00 by reason of the misappropriation and misapplication of its funds and property, by its secretary and treasurer, the defendant, Raymond E. Smith; and it further appearing that the aforesaid Harvey

Mott, Charles C. Lurich, George E. Krug, William T. Benjamin, William F. Keim, Harry W. Foster, Emile C. Bataille, G. Rowland Munroe, John B. Scarlett, Worthington H. Ingersoll, William Fairlie, John S. Bell, William W. Woodward, Elmer K. Sexton, William P. Odell, Clinton F. McCord, while directors of said Trust Company had notice that said Raymond E. Smith was unworthy of trust and confidence, but nevertheless retained said Smith in his office of secretary and treasurer of Roseville Trust Company aforesaid, and thereafter permitted him to have control of the funds and property of said Trust Company without sufficient check, supervision and restraint; and it further appearing by reason of said negligent acts on the part of said directors, the said Harvey Mott, Charles C. Lurich, George E. Krug, William T. Benjamin, William F. Keim, Harry W. Foster, G. Rowland Munroe, John B. Scarlett and Worthington H. Ingersoll became and are liable to complainant for $400,000.00, parcel of said $575,000.00; and that the said defendant Emile C. Bataille became and is liable to complainant for $46,701.84, parcel of said $575,000.00; and it further appearing that the aforesaid William P. Odell, William Fairlie, John S. Bell, Fred Kilgus, Frances E. Banister, William J. Banister, Clinton F. McCord, James B. Banister, William W. Woodward and Elmer K. Sexton have been released and discharged by complainant by releases under seal;

And it further appearing to the Court that the said defendants, Harvey Mott, Charles C. Lurich, George E. Krug, Edward D. Dunn, William T.

Benjamin, William F. Keim, Harry W. Foster, Emile C. Bataille, G. Rowland Munroe, John B. Scarlett, Worthington H. Ingersoll and Raymond E. Smith while directors of said Trust Company caused or permitted said Roseville Trust Company to discount commercial paper and to make loans upon bills and notes to persons other than a county, city, town, township, borough and municipality of this State (contrary to the form of the statute in such case made and provided, that is contrary to the provisions of Section 7 of an Act of the 123d Legislature of the State of New Jersey entitled "An Act Concerning Trust Companies" Revision of 1899); and that the complainant is entitled, to the extent hereinafter set forth to the relief prayed for in the bill of complaint;

And it further appearing to the Court that the defendant, William T. Benjamin is not entitled to any of the relief prayed for in his counterclaim and is without any equity against any of the parties therein named except the defendant, Raymond E. Smith; but that the said defendant Raymond E. Smith is primarily liable for the whole of the amount $400,000.00 aforesaid and the whole of the amount $46,701.84 aforesaid:

It is, thereupon, on this thirty first day of December, 1919, by Edwin Robert Walker, Chancellor of the State of New Jersey. Ordered, Adjudged and Decreed, and the Chancellor, by virtue of the power and authority of this Court, doth hereby order, adjudge and decree that the said defendants, Harvey Mott, Charles C. Lurich, George E. Krug, William T. Benjamin, William

F. Keim, Harry W. Foster, G. Rowland Munroe, John E. Scarlett, Worthington H. Ingersoll and Raymond E. Smith, shall within ten days after service upon them, or their respective solicitors of a copy of this decree, pay to the said complainant or his successor or duly authorized agent or deputy for and in behalf of said Roseville Trust Company the said sum of $400,000.00, and that the said defendant, Emile C. Bataille shall within such time pay as aforesaid, the sum of $46,-701.84, together with interest upon said sums, respectively, from the date of this decree, together with the costs as taxed and the counsel fee as hereinafter allowed, and that in default thereof an execution issue according to the rules and practice of this Court, and

It is further Orderd, Adjudged and Decreed, that it be, and it hereby is, referred to Alonzo Church, Esquire, one of the Masters of this Court, to ascertain and report, as to each of the said defendants, the losses, if any, suffered by said Roseville Trust Company upon loans unlawfully granted or permitted by said defendants, and the defendant, Edward Dunn as directors, respectively, during their several terms of office, in conformity with the opinion heretofore filed herein, and that the said Master do make his report with convenient speed, and that the complainant be, and he hereby is permitted to apply for a further decree, supplemental hereto, in accordance with such report, and,

It is further Ordered, Adjudged and Decreed, that the counter-claim of the said William T. Benjamin be and the same is hereby dismissed,

together with the costs as taxed, and that execution issue therefor, according to the rules and practice of this Court, but that the defendants Harvey Mott, Charles C. Lurich, George E. Krug, Edward Dunn, William T. Benjamin, William F. Keim, Harry W. Foster, Emile C. Bataille and G. Rowland Munroe may hereafter apply to this Court for relief against the defendant Raymond E. Smith.

It is further Ordered, Adjudged and Decreed that the complainant be, and he hereby is, allowed and granted a counsel fee of $5,000.00, to be paid by the defendants, as aforesaid.

E. R. WALKER,
Chancellor.

A True Copy,
Jesse R. Salmon,
Clerk.

Testimony

IN CHANCERY OF NEW JERSEY

Between
ROSEVILLE TRUST COMPANY,
Complainant,
and
HARVEY MOTT and others,
Defendants.

First Day.

Before His Honor Vice Chancellor Stevens.

Mr. Roger Hinds and Mr. Edward F. Clark, for complainants.

Mr. Otto A. Stiefel, for Charles C. Lurich and George Krug.

Mr. Gilbert Collins and Mr. David A. Newton for Edward D. Dunn.

Messrs. Osborne & Cornish for William P. Benjamin.

Mr. Borden D. Whiting for Harvey Mott.

Mr. Scott German for William F. Keim.

Mr. Jerome D. Congleton for Harry W. Foster.

Mr. G. Roland Munroe in person.

Mr. John W. McGeehan, Jr. for John B. Scarlett.

Mr. William F. Delaney for Emil C. Bataille.

Messrs. Lum, Tamblyn & Colyer for third parties Frances E. Banister, William A. Banister, Albert L. Banister, executors of William J. Banister, de-

ceased; James B. Banister, Clinton F. McCord, William J. Woodward.

Mr. Chester W. Fairlie for third parties William P. O'Dell, John S. Bell, Herbert K. Sexton, and Kate I. Fairlie, administratrix of the estate of William Fairlie.

Mr. George W. C. McCarter for third party Frederick Kilgus.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Wednesday, April 11, 1917, at Chancery Chambers, Newark, New Jersey.

Mr. Hinds: For the benefit of the record may I introduce Mr. Edward F. Clark of the New York bar.

Two of the parties are in default not only in pleading but in appearance, Raymond E. Smith and defendant, Ingersoll. I call to your honor's attention that all of the original defendants have admitted the allegations in the first and second paragraphs; with certain minor exceptions all have admitted the third paragraph, and Mr. Stiefel will perhaps consent to admitting the certificate of incorporation on behalf of his two clients, and the by-laws, which all the others have admitted, and we can be saved formal proof in that respect; I can show Mr. Stiefel that they have been faithfully set forth in the bill.

Mr. Stiefel: I will admit that, subject to inspection of the same if it be necessary afterwards.

Mr. Hinds: May I have leave to amend, perhaps in a minor respect, respecting the list of

directors as it appears in the fifth paragraph of the bill, at pages 5 and 6.We have not included the defendant, Foster. There has been no surprise because we have alleged he was vice-president and a member of the Executive Committee, and we have alleged the requirement that those officers be selected from among the directors; so I assume Mr. Congleton will have no objection to our amending to include Mr. Foster as a director from the beginning, November 28, 1908, until the close of the institution in 1913.

Mr. Congleton: No objection.

WILLIAM P. ODELL, sworn:

Direct-examination by Mr. Hinds:

Q. Where do you reside, Mr. Odell? A. 179 North Sixth Street, Newark.

Q. What is your occupation? A. Retired.

Q. What was your occupation in August, 1913? A. Cashier of the H. B. Claflin Company, a corporation.

Q. In New York? A. New York City.

Q. At that time what was your connection with the Roseville Trust Company, the complainant? A. President.

Q. How long had you held that office? A. From its incorporation.

Q. In 1908? A. I think it was, yes.

Q. You had throughout that period been a director also? A. Yes, sir.

Q. On or about the fourteenth day of August, 1913 did the Banking Department, through its Commissioner of Banking, take possession of the institution? A. 1914?

Q. 1913, August 14th. A. I believe it did, yes, sir.

Q. Mr. O'Dell, will you take the list of directors which has been admitted by all the defendants, and which I now show you, and state to the best of your knowledge the occupation of each of those gentlemen at the time of his selection or election? A. You just want me to give the name and the occupation, is that all?

Mr. German: Is that material, your Honor?

The Court: Oh, yes, I think so.

A. William J. Banister is in the hardware business in Newark; Emil C. Bataille, I am not sure what he was in 1908, I think he was—do you want me to state what I think he was?

Q. Will you state to the best of your recollection what he was? A. The best of my recollection he was I think with the Mutual Trust Company of Orange, I think.

Q. And in the instance of each of these gentlemen if they have more than one occupation kindly state it? A. James B. Banister was in the shoe business, shoe manufacturing; William T. Benjamin I believe was in the same business; John S. Bell was in the Union Ice Company; William Fairlie, coal; William H. Ingersoll, I can't say that I just know what his occupation was; William F.—

Mr. Hinds: That is a typographical error. May I amend so as to make William F. Klein, as it is given on page 5, William F. Keim.

A. A doctor; Frederick Kiligus, in the contracting business; George E. Krug, architect;

Charles C. Lurich is in the real estate; C. F. McCord was in the life insurance; Harvey Mott I think was retired; G. Roland Munroe was a lawyer, practicing lawyer; William P. O'Dell, cashier of H. B. Claflin Company; John B. Scarlett is in the real estate business; Elmer K. Sexton, in the Board of Education; Raymond E. Smith—do you mean previous to the time he was secretary?

Q. Yes, if you know.

A. I think he was at the Second National Bank of East Orange. W. W. Woodward was in the hardware and general stores business; Edward D. Dunn was in the real estate business.

Q. And Harry W. Foster, whose name has been added by amendment, what was his occupation? A. I don't know just what he was, manufacturer of alcohol lamps at that time, I think.

Q. Is it not a fact that all of these gentlemen resided in the neighborhood? A. They did all reside in the neighborhood?

Q. I am asking you is not that a fact? A. No, sir.

Q. Of those that you have mentioned tell me what ones did not reside in the neighborhood? A. Woodward and Ingersoll I think resided at Newton, New Jersey. Do you call Newark in the neighborhood?

Q. Yes. A. Mr. Mott resided in East Orange; Mr. Krug resided in East Orange.

Q. They resided within two or three miles, at least, of the institution, did they not? A. Yes.

Q. And with the exception of yourself and any others that you have told about they all had their places of business either in the immediate

neighborhood or at least in Newark, did they not? A. I think so.

Q. Now, Mr. O'Dell, do you know what salary Mr. Raymond E. Smith received at the outset of his connection with the Roseville Trust Company? A. If I remember rightly I think it was $2,500.

Q. Per annum? A. Yes, to the best of my recollection.

Q. He was, by the way, the treasurer and secretary of the Roseville Trust Company from its organization, was he not? A. Yes.

Q. And a member of its board of directors? A. Yes.

Q. Did you have any part in the original contract or terms of employment of Mr. Smith? A. No, sir.

Q. Do you know what they were? A. No, sir.

Q. As president of the institution did you not, at least soon after his employment, learn what his duties and terms of his employement were or were to be? A. All I knew at the time the institution started about what his duties were was according to the by-laws.

Q. What were they to be?

The Court: Well, the by-laws show that.

Q. Did you as president, or to your knowledge did any other officer of the Roseville Trust Company make any agreement with Mr. Smith, either verbally or otherwise, with respect to whether or not he should be permitted to engage in outside enterprises or businesses? A. I did not; I don't know whether any other director did.

Judge Collins: I object to that. It seems to me that is not competent, that he or some other one made an agreement.

Q. As president of the institution what duties did you perform?

The Court: Well, the by-laws specify that, do they not?

Mr. Hinds: Only in general, your Honor, and it does not necessarily follow that he performed them.

The Court: Well the by-laws show, I suppose, what duties the president was required to perform; now what duties he did in fact perform can only be learned from the witness himself. If your question is that, you may ask him.

Mr. Hinds: That is the purpose of the question.

By the Court: Q. Well, now, what duties did you perform? A. Do you want me to specify what duties?

By the Court: Q. What you actually did; not what you were required to do by the by-laws but what you did?

Mr. Fairlie: I might refresh the witness's recollection by letting him have a copy of the by-laws before him.

Q. You have it on page 53 of the bill, Mr. O'Dell, before you, beginning page 52 and 53. A. Why I tried to follow out as near as I could, to the best of my ability, the spirit of the by-laws here which provide for the president to preside at the board of directors; I did that; and also preside as chairman of the Executive Committee. All those meetings I faithfully attend-

ed as near as I could, and tried more or less in my ability to carry out any resolutions or orders that the board of directors gave; signed all certificates of stock, etc. I tried to, as near as I possibly could, follow the spirit of the by-laws.

Q. Have you finished your answer? A. Yes, sir.

Q. Now outside of your attendance at the meetings of the Executive Committee and the board of directors did you visit the office of the Trust Company from time to time? A. I did.

Q. About how often? A. I was there about every morning.

Q. What brought you there? A. To talk over matters of loans, etc, with Mr. Smith, and the days business that had gone by.

Q. And in a general way about how long would you be there on those visits? A. From half hour to an hour.

Q. Did you perform any duties in your New York office respecting the Trust Company's affairs? A. Well, if there were certain communications over the telephone from Smith I performed those; different things.

Q. Your duties also, as you performed them, included matters connected with the financing of the institution, did they not? A. I don't quite understand the question, financing the institution, what he means, I don't know what he means by financing the institution.

The Court: If you do not know what he means you may say so.

A. I don't know what you mean.

Q. I will defer this subject of inquiry until

later. I will show the witness now a letter purporting to bear his signature, dated May 17, 1909, and ask you if you wrote that letter? A. I did.

The Court: I can understand that in a case of this sort correspondence might be offered that would be evidence against the man who wrote it and not evidence against the others. It seems to me that inasmuch as there are something like twelve lawyers in this case on the part of the defendants, for the purpose of saving time and for the purpose of saving the rights of the parties as well it might be understood that any letter produced should be subject to objection by all the counsel in the case except the counsel of the gentleman who wrote the letter.

Judge Collins: That would seem to be satisfactory.

The Court: That will be understood; so that no specific objection need be made on that ground. Of course if there are objections on other grounds that is a different thing.

Judge Collins: May another thing be understood. Of course we all feel a little embarrassed, there are a dozen of us, and each man has some inherent native modesty, and he is waiting for somebody else to object I suppose, and perhaps a thing will slip through because each one refrains, thinking somebody else would object, and they don't. Another thing is that I pre-

sume an objection interposed by counsel for one defendant would not avail for other defendants unless they each arose and made the same objection, and that would be interminable and very unsatisfactory. Now may it be understood that when an objection is made it shall be considered as available for each.

The Court: By anybody who is entitled to use it.

Mr. Hinds: May this be marked, being the letter printed at page 80 of the bill.

Marked Exhibit C-1.

Q. I show the witness a letter dated May 14th, purporting to have been addressed by the Banking Examiner, and which is printed in the bill at page 68, and ask you whether you received that letter? A. I cannot say that I received this letter; I received a letter I think purporting to be something like it.

Q. Will you look at the signature and see if that refreshes your recollection? A. Well, it is a letter that, to the best of my recollection I received a letter something after the same style, because I acknowledge it in that letter.

Q. That is then the letter, the receipt of which you acknowledged? A. I don't say that is the identical letter I received, may be a copy of it.

Q. Have you read the letter as it is set forth in the bill of complaint, page 68? A. Where is the bill of complaint? I haven't seen the bill of complaint.

Q. The paper before you, that is the bill of complaint. A. I hadn't opened it at all.

Q. I ask you to turn to page 68 and ask wheth-

er you have read the letter as it is there set forth?

Mr. Fairlie: This witness has not seen this bill of complaint; he is not a party to this bill of complaint which he holds in his hand.

Q. (Question read.) A. No.

Mr. Hinds: If your Honor please, I offer the letter in evidence. I think there has been perhaps a little weakness in the witness's identication of it, but it is the letter which is set forth in the bill, and perhaps there will be no objection to its being received in evidence even at this time.

Judge Collins: I object to it on behalf of Mr. Dunn because he in his answer says he never knew of it, and he had no knowledge of it; I object to it as evidence against him, unless knowledge of it is brought home to him; it was written before Mr. Dunn was a director.

The Court: The question now is whether you object to it on the ground that it has not been properly proved.

Judge Collins: As far as I am concerned I do not; I think it was signed by Vivian M. Lewis.

The Court: Does anybody? Well, nobody seems to object to it, so you can put it in; its effect will be considered hereafter.

Marked Exhibit C-2.

Mr. Hinds: If your Honor please, since I shall examine the witness respect-

ing certain facts that are stated in the letter, and since this letter, or at least portions of it are very crucial part of our case, I shall ask the indulgence of the Court to read certain parts of the letter, not only for the witness's benefit but because of its illuminating the entire case which follows.

The Court: You can read any passage upon which you wish to found a question.

Mr. Hinds: I am afraid that will require me to read perhaps two or three pages, because I desire to question the witness about all of those matters.

Mr. Stiefel: I would like to make a suggestion. This is part of correspondence which is mentioned in the bill, and I do not see why all the correspondence should not be put in, it is fair to all the parties.

The Court: Well, if they do not put it in you will have the right to put it in. Now what you are doing is to get the witness's knowledge; you can take the letter as your guide and you can find out what the witness knows with respect to the facts stated in that letter.

Mr. Hinds: I assume then that I may be permitted to read the portions which I wish to call to his attention preparatory to questioning him.

The Court: No; I think you ought to read any passage that bears upon your question and then put your question.

Q. Then, Mr. O'Dell, I read from the letter May 14, 1909, which I have just offered in evidence:

"William P. O'Dell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

"Dear Sir: This is the letter of Vivian M. Lewis, who was at that time Commissioner of Banking and Insurance of the State of New Jersey. 'Dear Sir: The report on the official examination of your Company as of March 11th last' that would be the year 1909 'which recently came to hand, shows a condition of affairs which is by no means satisfactory to this Department. The most serious matter is the use by the Treasurer, Mr. Smith, of the Company's funds, without the knowledge of the other officers or directors, for the benefit of one of his friends. The facts are reported to be as follows: 'On February 6th last Mr. Smith drew a draft on the New York State National Bank of Albany, to the order of Charles A. Nones, for $1,350, which was endorsed by the latter and given by him to one Edward G. Johns, said to be a New York broker, who deposited it to his (Johns) credit in the National Copper Bank of New York. The account of the New York State National was not credited with this draft until a week later, February 13th, when two checks were drawn on the Philadelphia National Bank, of Philadelphia, one for $1,350 and the other for $1,000. The account of the New York State National was then credited with the $1,350, and an additional $1,000 in each case was handed to Nones. For neither of these checks, of $1,350 and $1,000, drawn on the Philadelphia National Bank, was there any credit made on the

books of your Company, but the total amount, $2,350, was charged to the Philadelphia National, thus covering the credit of $1,350 to the account of the New York State National and the handing out of the $1,000 in cash, hence at the date of the examination the Company's account with the Philadelphia National showed a shortage of $2,-350.'." I skip over a somewhat similar statement of details to the middle of page 71.

The Court: Does that relate to the same matter?

Q. The same matter, yes. "No mention was made by Treasurer Smith of these earlier transactions to either the officers of the Company or to the Examiner, and when his attention was called to the same he admitted the fact and said that previously Nones had always made good, while this last time he had not.' Taking the various matters together they seem to disprove the statement of Treasurer Smith that he had no interest in any of the transactions and that they were all made out of friendship for Nones. But be this as it may, no sufficient excuse can be offered by Mr. Smith for his action, which seems indefensible and deserving of the strongest condemnation. No confidence can be placed by this Department in any official who would be guilty of this sort of thing, nor does he seem worthy of the confidence of the directors of the institution. He should be required to resign and cease his connection with the Company. The Examiner states that the matter is known only to yourself and directors Foster and Munroe, and that at the interview he had with you and Director Munroe, at your home, on the evening

of March 18th, the matter was thoroughly gone over and that he informed you and Director Munroe that the facts must be made known to every director, which I assume has been done." Now Mr. Odell, does what I have read state the facts as you found them to exist at that time?

Mr. Fairlie: In respect of what?

Q. In respect to the statements made in that letter by the Department, having to do with the conduct of the Treasurer Smith respecting the accounts and respecting his transaction with one Nones.

Mr. German: I object on behalf of Director Keim.

The Court: It seems to me that the witness ought to be asked whether on the receipt of that letter he made an investigation, and then what the result of that investigation was.

Q. I will withdraw the question. Mr. Odell, upon the receipt of that letter did you cause an inquiry or invesigation to be made respecting the facts which I have just read to you as contained in the letter? A. Not upon the receipt of the letter; they had already been looked into after the interview with the Examiner, which was previous, I think, to this letter, must have been just previous to the letter.

Q. And were the results of that examination brought to your attention, or did you take part in the inquiry or investigation? A. The only investigation we made, I think, was made by Mr. Fairlie and myself, and that was with Mr. Smith personally.

By the Court: Q. What did you find? A.

He acknowledged the sum total of what has been stated in this letter; but that was previous to the receipt of this letter.

Q. Did you bring to the attention of each and every director the contents of that letter? A. Each and every director had this letter read to him.

Judge Collins: Of course that must be limited to those who were then directors. I would not want by such a question as that to have it implied that he notified Mr. Dunn, for example, who was not then a director and knew nothing about it.

The Court: The question relates to the then directors.

A. Each and every director had this letter read to them.

By the Court: Q. That is to say, each and every director who was then a director? A. Yes.

Q. Just describe what next took place in your institution respecting this matter? A. You mean in respect to this matter of the letter?

By the Court: Q. What action did you take, if any, upon the letter? A. Why, I called a full board meeting and this letter was read to them, I think had been read to them before the full board was called, and there was a written vote taken for the retention or dismissal of Mr. Smith, I think the minutes will show that such a meeting was called, and the votes were, I think the first vote, I don't know as it appears in the minutes, the first vote was two against and eighteen or so for retaining him, and then there was another vote taken.

Mr. German: I object to this because the minutes will show who was there and what was done.

The Court: Call his attention to the minutes, and then if there is anything outside of the minutes he may state it.

Q. I show you a book purporting to be the minutes of the Roseville Trust Company, and ask you what that book is, if you recognize it?

The Court: Well, it is admitted to be the minutes I presume; no use wasting unnecessary time; nobody doubts that those are the minutes I presume.

A. May I make an explanation in regard to these minutes?

The Court: No; turn to the minutes of this particular meeting.

Q. The letter was received on May 14, 1909, if that will help the witness.

Mr. Stiefel: A special meeting of the board of directors was called for June 21, 1909.

The Court: Well, this book does not cover that. You now produce another book containing a copy of the meeting of the board of directors for June 21, 1909. Now you may read from the minutes what the action was.

Mr. German: I would like to have the witness read who were there, specially as to whether my client, Doctor Keim, was there.

The Court: That is proper; just state who were present.

A. Odell, Fairlie, Foster, W. J. Banister, Bataille, Benjamin, Mott, Ingersoll, Kilgus, Krug, Munroe, Lurich, Scarlett, Sexton and Woodward.

Q. Now read the minutes. A. "Special meeting of the board of directors was called by the president for June 21 at 7:30 p. m. as per the following notice sent to each director by registered delivery—

By the Court: Q. Go on and read what was done; never mind about the notice. A. "The letter of the Commissioner of Banking and Insurance dated May 14, 1909 was duly read as was also the reply letter of president Odell, dated June 3d to the Commissioner. The resignation of Secretary-Treasurer Raymond E. Smith was read as follows:"

By the Court: Q. Read that. A. "Mr. Wm. P. Odell, President. June 18, 1909. and Members of the Board of Directors of Roseville Trust Co. Gentlemen: I beg to hand you herewith my resignation as Secretary and Treasurer of your Institution.

Yours very truly,

R. E. Smith."

"The directors thoroughly discussed the letter of the Commissioner of Banking and Insurance, and decided to have an informal secret ballot taken on the resignation of Secretary-Treasurer Raymond E. Smith.

The result of the ballot was without a dissenting vote against the acceptance of Mr. Smith's resignation as Secretary and Treasurer of the Roseville Trust Company.

A motion was then made by Directors Scarlett and seconded by Director Banister, that Raymond E. Smith be retained as Secretary and Treasurer of the Roseville Trust Company. The motion being put it was unanimously carried.

The meeting then adjourned.

E. K. Sexton,
Sec'y pro-tem."

Mr. Hinds: I offer that portion of the minutes in evidence.

Marked Exhibit C-3.

Q. I now show you a letter dated June 21, 1909, purporting to be signed by E. K. Sexton, and annexed slip, and ask you what that is, if you know. That is printed at pages 85, 86 and 87 of the bill of complaint. A. This was a further letter in answer to the Commissioner's letter there of May 14th, in regard to the full board meeting and resignation of Raymond E. Smith.

Q. And what is the third sheet there annexed to it? A. It is the signatures of all the directors of the company, signed by all the directors.

Mr. Hinds: I offer the first four of those sheets in evidence, your Honor, being the letter and the acknowledgments.

Marked Exhibit C-4.

Q. You have said that on the first ballot there were two votes against the action which was subsequently taken; whose votes were they? A. Well, it was a silent vote, it was a written vote, no names were put down; I know I voted against it for one; I don't know who the other vote was.

Q. There was action prior to what was recorded on the minutes which did not get on the minu-

tes, was there not? A. Oh, there were verbal conversations between the directors, certainly.

Q. Will you describe that to the best of your recollection; if you cannot recall the details let us have the substance of what was said? A. I cannot give the detailed statement, or in substance, of the directors meeting; there were twenty of them there I think, and they were all talking with each other about the action to be taken.

Q. Now I read to you further from the letter May 14, 1909, page 69 in the bill of complaint, as follows: "The explanation offered by Mr. Smith was that Nones, a friend of his, had come to him on February 6th, stating that he must have $1,350, and that he (Mr. Smith) had advanced Nones the money in this manner, taking the note of the latter for the amount. As Nones already had in the bank $6,000 of paper, of which only $3,500 was known to any of the directors of the Company, the other $2,500 having been put in by Treasurer Smith without reporting it to the Board or Executive Committee, he (Mr. Smith) therefore did not put the $1,350 through as a loan, but allowed it to stand without any entry on his books, thus making a deficit of $1,350 in the Company's Albany account." Now what investigation, if any, did you make of that matter which I have just read to you? A. Didn't make any further investigation than the Examiner made.

Q. Did you find it was a fact that Mr. Smith had permitted loans aggregating $6,000 to Mr. Nones, of which only $3,500 was known to any of the directors of the company? A. He acknowledged it to me and Mr. Fairlie.

Q. And you found that to be the fact, did you? A. Only from his acknowledging and the Bank Examiner's report.

Q. Did the directors following upon their action in retaining Mr. Smith as treasurer of the instiution institute any reforms or changes in the methods of administration of the institution? A. Not to my knowledge at the present time.

By the Court: Q. How long were you president of the institution? A. The whole time it was in existence.

By the Court: Q. The whole time of its existence? A. Yes.

Q. You had a conversation I believe you said with Mr. Appleton, the Bank Examiner, at about that time? A. At my house, yes, sir.

Q. Will you tell me the substance of what was said; first tell me who was present and then tell me the substance of what was said, and who said it?

Mr. McCarter: I object to the conversation, as far as the defendant, Kilgus is concerned.

Mr. German: I object for Doctor Keim.

Mr. Hinds: He has stated that he reported this conversation to the board, and this occurred before the meeting, and I want to have brought out what it was that was said.

The Court: What he reported to the board I suppose.

Q. Will you tell us what report you made to the board respecting the matters discussed during the conference at your house with Mr. Appleton, telling us also who was present at that conference? A. Why, Mr. Appleton—

Mr. McCarter: I renew the objection.

The Court: What was said to the board in board meeting; I understand this was the information upon which the result was subsequently founded.

A. Mr. Appleton called at my house one evening right after he made his examination.

Mr. German: I object to this.

Q. Is this what you reported to the board as having taken place? A. Yes, they knew all about it.

The Court: No. The question is what you stated to the board about your conversation with him; not what your conversation was, but what you stated to the board afterwards about your conversation.

A. The gentleman is asking me who was present at my house, and I can't get at that unless I start in—

The Court: I overrule that.

Mr. Fairlie: Ought we not to know when, at what meeting of the board this report was made, and who were present?

The Court: Well, we cannot learn everything at once.

Q. Well, it is a fact, is it not, that at the meeting, the minutes of which you just read, you made a report to the board of what was said at the Appleton conference; is not that a fact? A. No, sir.

Q. What did you report to the board at that meeting, if anything? A. I reported the letter that the Commissioner had sent us, and read the letter to them, and it is so in the minutes.

Q. Did you make any reference at that meeting to any of the gentlemen or to the directors respecting the Appleton conference? A. They knew about that before the meeting.

Q. How did they know it? A. I had met them different times at the bank and in the street, etc.

Q. All of them? A. A good majority of them I think, to the best of my knowledge.

Q. What ones? A. I cannot specify at this time what ones.

Q. What did you tell them about this Appleton conversation?

Mr. Whiting: Tell who, the board or any specific individuals?

Mr. Hinds: Refers to what he told any of the directors.

The Court: Unless it refers to specific directors. I do not see of what value it is. If it is nothing more than what appears in the letter of Mr. Lewis I do not see how it helps the case. What do you want to show, something in addition to what Mr. Lewis has said?

Mr. Hinds: Our understanding is that what Mr. Lewis said merely contains the general substance of it, but there were other statements and that is what I hope to elicit from the witness.

The Court: I presume that you can show that this witness had conversations with other directors.

Q. Can you recall any of the directors to whom you talked about what happened at the Appleton conference? A. I think I can recall Mr. Foster, being the vice-president.

Q. Any others? A. No doubt I talked with Mr. Fairlie about it, being another officer.

By Mr. Fairlie: Q. You say "no doubt." A. No doubt, I can't say for a certainty I did; it was a general conversation I had with each of the gentlemen as I met them at any time, and they were in the bank very often and I would meet them there mornings; there wasn't very much elapsed time in between the time that Appleton was at my house and the time the letter came and was acted upon.

Q. Wasn't Mr. Appleton there in March of that year? A. I expect it was; that is the time the examination was made, the time he made the examination; then there must have some time elapsed.

Q. What did you say to Mr. Foster? A. I cannot recall.

Q. What other directors were present? A. What the Bank Examiner says there, the first part of his letter is about substantially what Appleton told me about Nones and said it must be taken up and attended to, and it was taken up and attended to within a few days afterwards I believe, the Nones matter.

Q. What other directors were present at the talk with Mr. Appleton prior to the reading of the letter to the board? A. Mr. Munroe; there was no conversation between I and Mr. Appleton until Mr. Munroe got there, I wouldn't listen to anything he had to say until then.

Q. Well, your company had, had it not, deposits in various other banks? A. Reserve agents, yes, sir.

Q. What is the fact respecting the signatures

that were required so that your bank might draw against these depository accounts? A. The by-laws, I think, show that all the signatures were required.

Q. As a matter of practice? A. As a matter of practice, why, it was the treasurer, president, or any of the vice-presidents I think, if I remember correctly.

Q. When the treasurer signed did any other officer sign with him? A. No, sir.

Q. It is a fact, is it not, that it was almost the universal practice for those funds to be drawn by treasurer Smith alone? A. The majority of them.

Mr. Delaney: I object to the word "universal," as being leading, because there is no definite period of time shown as to the existence of that universal custom.

The Court: He is now detailing the general course of business.

Q. That was true throughout the company's existence, was it? A. Yes, sir.

Q. Now tell us who was in the employ at the time of its opening, and briefly the duties of each? A. Besides the treasurer and secretary?

Q. Under the treasurer? A. There was a teller by the name of Jennings, who acted as paying and receiving teller at the incorporation, at the time, for the saving of expense, and a bookkeeper by the name of Thompson.

Q. What books did he keep? A. And a janitor, that is the janitor of the building.

Q. What books did Mr. Thompson keep? A. Kept the depositors ledger I think, and he had written up the pay blotter, or something of that kind.

By the Court: Q. There was a president and a vice-president? A. President and two vice-presidents.

By the Court: Q. Who were they? A. Vice-president William Fairlie and Harry Foster.

By the Court: Q. Then the treasurer and secretary? A. Were one.

By the Court: Q. Mr. Smith. And then in addition you had only a teller and a bookkeeper? A. Teller and bookkeeper, yes.

By the Court: Q. And anybody else except the janitor? A. That is all, and I think a stenographer.

Mr. German: While your Honor is on that subject, there were two committees, an executive committee and examining committee.

The Court: Well, that is a different thing altogether; I am talking about the office force.

Q. You have said that it was the bookkeeper, Thompson's, duty to keep the individual deposit ledgers. Who kept the general ledger from the beginning? A. I am pretty certain Mr. Smith did.

Q. It is a fact, is it not, that the general ledger is the book which summarizes all of the transactions of the bank? A. Yes, sir.

Q. And it is a fact, is not, that the general ledger acts as a control of all of the subsidiary accounts of the bank?

Mr. Stiefel: I object; why not let the book speak for itself.

The Court: You can ask the witness, because he is speaking as an expert, what the purpose of the general ledger was.

A. I believe so, yes, sir.

Q. Was there as a matter of daily practice any supervision or independent check upon Mr. Smith in his keeping of the general ledger? A. Not so far as I know.

Q. And that was true throughout the period of the institution's activity, was it not, that was true the whole time the company was in existence?

The Court: The whole time of your presence there.

Mr. Hinds: I think he was president the whole time.

A. Do you mean any check?

Q. Any daily check? A. The examining committee was a check.

Q. I am asking you about daily check? A. No, not any further than the other clerks had access to the same.

Q. Now what, if anything, did the other clerks have to do with checking or supervising or keeping of the general ledger by Mr. Smith? A. I can't say what the work was, they all worked together, because the clerical force was very small, for the object of saving money.

Q. Do you know whether it was within the power or knowledge or ability of any of the other clerks, according to the system in vogue in the Roseville Trust Company, to supervise or check, or to be able to supervise or check the correctness of the general ledger as kept by Mr. Smith? A. Yes, sir, I am pretty sure they had access to the same, especially the teller.

Q. The teller. What books did the teller keep? A. I don't know as I can specify the exact name of the books.

Q. He kept the books having to do with the cash? A. Yes, sir, and the receipts.

Q. He didn't have anything to do with the books pertaining to collateral loans, for example, did he? A. I think he did.

Q. Did he have any handling of the individual deposit ledgers? A. I don't think he did.

Q. Did he have anything to do with the accounts with the several depositories where the Trust Company had accounts or balances on deposit? A. I think he did.

Q. Well, what? A. I can't say just what, it was in the due course of business he had access to them.

The Court: I suppose he is aviable as a witness?

Mr. Hinds: Yes, I think both of the tellers will be here.

Q. Now you have spoken of there being a check on the keeping of the general ledger other than a daily check; what was that? A. Why the Bank Examiners, Banking Department, made their semi-annual examinations, that was a check upon it to my knowledge, which I was very glad to have, and our own Examining Committee which made an examination once every six months.

By the Court: Q. Of whom was that Examining Committee composed; composed of directors, I suppose? A. Of directors, yes, sir.

By the Court: Q. How many in number? A. I think five.

By the Court: Q. Elected annually? A. No, sir, I think appointed by the president.

By the Court: Q. Well, does their appoint-

ment appear in the minutes? A. I think it does.

Q. It does, and we have alleged it in the bill as to two of the committees. Did you serve as a member of any of those examining committees? A. No, sir.

Q. Can you state, according to the practice in vogue in the Roseville Trust Company, what methods the Examining Committee employed in making their examinations?

Mr. McCarter: I object. It appears he did not act.

The Court: If the witness says he was not a member of the Examining Committee ex-officio, under those circumstances he can hardly tell what they did. He may of course say that he prescribed certain rules of conduct, if he did, and tell us what those rules were.

Mr. Hinds: I will add to the question the words "if you know," being president I think he might know what the practice was in his institution.

By the Court: Q. Well, did you prescribe any rules of conduct for their action? A. No, sir.

By the Court: Q. Then they acted as they thought best, is that it? A. They acted, as I understood it, as the chairman of the Examining Committee thought best; I had no knowledge at all of what actions they took.

Q. What other committees were there? A. Outside of the committees—

Q. Outside of the Examining Committee? A. Outside of the committees that the by-laws called for?

Q. Outside of the examining committee; was

there an executive committee? A. There was an executive committee, of course.

Q. Who appointed them? A. They were elected by the board of directors.

Q. You say you appointed the Examining Committee? A. I think I did, I am not sure.

Q. Did you appoint the examining committee who made the examination in May, 1913? A. I did.

Q. I call your attention to the minutes at or about that time, and ask you to state whom you appointed to make the examination in May, 1913; whom did you appoint? A. There was no appointment made on May 13, 1913 in the minutes; you mean January I guess.

Q. Well, I refer to the committee which acted in May, possibly you appointed them earlier than that, but I ask you to find that part of the minutes and tell us whom you appointed?

The Court: Cannot you give him the page?

Q. I do not know what the page is in the minute book.

The Court: Do you know what date?

Q. I think it would be early in January. A. Minutes of January 14, 1913. The following committee were appointed by the president to serve for the coming year as examining committee: Messrs. E. K. Sexton, chairman; J. B. Banister; W. T. Benjamin; C. F. McCord and George E. Krug.

Q. And was that the committee that made the examination in May, 1913? A. Yes, sir.

Mr. Hinds: Now if your Honor please, I would like to amend the bill in respect

to a clerical error. I did not include the defendant, Benjamin as having been one of those who continued to serve in May, 1913. If there is no objection I will ask that the bill be amended so as to include Mr. Benjamin.

Mr. Cornish: I think that perhaps the complainant may want to make further amendments to the bill to conform with the proof; it is very difficult in advance of this case to tell just what the proof will show; the defendants likewise may want to amend to have their answers correspond with the proof, and I suggest that that right be granted.

The Court: If I grant it to one side I will certainly grant it to the other.

Mr. Hinds: I would like to have the amendment noted at this point.

The Court: I shall have to observe the same practice throughout.

Mr. Hinds: Your Honor permits the bill to be amended in that respect?

The Court: There is no objection.

Mr. Cornish: I object, unless I have the privilege to amend.

The Court: Well, I say there is no objection, with that reservation.

Q. Now Mr. Odell, will you tell us what qualifications there were of those several gentlemen which made you appoint them on an examining committee? A. The main qualification of the chairman was that he was identified with the Board of Education and I supposed a learned man in mathematics, etc; and the rest of them I put on just simply as good business men.

Q. And Mr. Banister? A. Especially Mr. Banister and Mr. Benjamin and the rest of them.

Q. Now Mr. Odell, will you tell us who served on the executive committee from time to time, if you can recall it. I will refresh your recollection. A. I think the minutes will show that; I cannot recall all the gentlemen.

Q. If the Court please, that is not a matter at issue because that has been admitted now by all the defendants and is set forth at page 9 of the bill of complaint. Turn to page 9, Mr. Odell. Now that you have turned to that page and read the list, state to the best of your recollection the membership of the executive committee from time to time. Well, I will withdraw that question, I think it is covered by the pleadings.

The Court: I should think the minutes are the best evidence; you will offer the minutes in evidence and the minutes will show whether or not that printed list is or is not correct.

Q. How often did the executive committee meet? A. Once a week, and special meetings at different times if they were called by the president.

Q. What did the executive committee do as a general thing at those meetings? A. Went over the whole week's business, the report that was read from the general ledger by the treasurer and secretary, and went over the printed list of the loans, talked over new loans to be made, and went over the general business of the bank.

Q. Other than what was reported to you by your examining committee, did the executive committee in any way verify the correctness of

the reports of the condition of the bank's affairs, as made by Mr. Smith? A. Not to my knowledge. The general ledger was there on the table to be gone over by the committee any time they saw fit; sometimes they did individually go over it.

Q. And was that true at each of your executive committee meetings? A. As a rule I think it was.

Q. Is it a fact that at each meeting of the executive committee you compared the reports of condition presented by Mr. Smith with the general ledger? A. We did not; we had a printed report at each meeting of the transactions for the week, and that was supposed to agree with the ledger.

Q. Did you at any time verify that it did agree with the general ledger? A. I individually had at different times compared it.

Q. About how often? A. I can't say how often; that would be Monday evenings, when I was there Monday evenings.

Q. Did you at any time when you looked at the general ledger verify the extensions into the general ledger by reference to the accounts in the other books of the bank? A. I did not.

Q. Have you described all of the important duties which the executive committee performed from time to time, or were there others? A. I believe I have.

Q. It was the practice of your institution, was it not, to make reports to the Banking Department at intervals? A. When called for, yes, by the Banking Department.

Q. And those reports were signed in each case

by yourself? A. I don't know as they were in every case; as a general rule they were.

Q. How many signatures were as a general rule on that report signatures of directors? A. Oh, there was any one of the president or vice-presidents or the secretary and treasurer, or the treasurer I think they called it, had to be one of those four officers sign it.

Q. Now I show you what purports to be such report as of June 4, 1913, and ask if such is the fact? A. Yes, sir.

Mr. Hinds: I offer that in evidence.

Marked Exhibit C-5.

Mr. Delaney: It is not necessary for me to specifically object to that report, because in my instance I represent a director peculiar from the others, inasmuch as he got out in December, 1910, but I object to evidence of transactions subsequent to his being relieved of the office of director.

Recess.

Q. Mr. Odell, are the signatures purporting to be the signatures of Mr. Lurich, Mr. Foster and Mr. Fairlie, their signatures on that paper? A. Yes, sir.

Q. Prior to signing that paper and filing it what, if any, investigation did you make to verify the correctness of the information contained therein? A. I don't remember to have made any comparison of the figures. Smith swore to it before I did, to its being correct, and I swore to it after he had signed it.

Q. And you had no means of knowing whether

or not it was correct, other than that Mr. Smith had sworn to it; is that correct? A. That is correct; full confidence in his word.

Q. And so far as you know that was true of the other directors who signed it? A. So far as I know.

Mr. Whiting: I object to that.

A. I wasn't present when—

Mr. Fairlie: I object to that question. I appear for one of the others that signed that report.

The Court: I think they can speak for themselves; this witness would not know.

Mr. Hinds: If your Honor please, the purpose of the question was to bring out whether or not he did know that there was any other means of verification, to his knowledge.

The Court: As far as he can speak for himself the evidence is competent; when he speaks for others he may have an opinion but he cannot know unless there are certain facts occurring in his presence to which he could testify.

Q. Were you present when the other signers affixed their signatures to that report? A. No.

Q. Did you see any of them at work upon any of the books of the bank in verifying that report? A. No.

Mr. Fairlie: I object.

Mr. McCarter: What was the date of that report?

Mr. Hinds: June 4, 1913.

Q. I ask you if you know what this book is? A. I think it is the general ledger.

Mr. Hinds: May it be identified as a book, before I offer the particular page? I offer the book as a whole for identification.

The Court: What do you call the book?

Mr. Hinds: General ledger.

The Court: Does anybody wish to examine as to the authenticity of the book? It may be offered as an exhibit then.

Mr. Hinds: Then I offer the book in evidence.

Marked Exhibit C-6.

Mr. Whiting: It seems to me there should be the privilege of cross-examining somebody as to the accuracy and reliability of the book, etc., if it is to be used by the other side.

The Court: It is not a question of the accuracy of the book now; it is a question whether it is a book of the bank, that is all.

Mr. Whiting: We cannot question that of course.

Mr. Cornish: May we have it a little more accurately described. It is one of two general ledgers?

The Court: How about that?

Q. Is this book what it purports to be, the general ledger of the Roseville Trust Company from October 21, 1911 to the clost of the institution; is that a fact? A. Yes, sir.

Q. Will you turn to the fourth day of June, 1913, and tell me the amount of cash in the institution as shown by the general ledger on that date?

Mr. German: What page is that?

Q. The pages are not numbered; it is for the page containing June 4th, 1913. A. $35,652.31.

Q. Will you now state the amount of cash in the institution on that date, as shown in the report of June 4, 1913, being Exhibit C-5? A. $51,943.36.

Q. Now Mr. Odell, on that date did you make any investigation to determine what the total of the individual deposits was, as liabilities of the Roseville Trust Company? A. On June fourth?

Q. On June fourth? A. No, sir.

Q. I now show you another book produced from the custody of the Banking Department, and ask you if you can tell me what that book is? A. I think it is the check register of the vouchers returned, I am not certain.

Q. Refreshing your recollection from an examination of the cover of the book can you give me any better answer? A. It says "Cash Book No. 5."

Q. Of what institution? A. Roseville Trust Company.

Q. Well, to the best of your knowledge and belief is that one of the cash books of the Roseville Trust Company? A. Yes, it is.

Q. Will you turn to page containing June 4, 1913 and tell me what the cash balance—

Mr. Cornish: Is that book in evidence?

Mr. Hinds: I will offer it in evidence at this point.

Marked Exhibit C-7.

Q. State what the total cash in the institution was on the close of business on that date? A. Including the specie?

Q. All the cash? A. $35,878.46.

Q. Where do you find that figure? A. In the cash book, June 4th, covering specie and cash so-called.

Q. Do you find that figure there as such, or is it a result of some operation? A. Result of two additions.

Q. What operation have you performed to arrive at that figure? A. I have added the specie to what he calls cash.

Q. What is the specie as shown here? A. One hundred twenty-six dollars and fifteen cents.

Q. And the cash? A. $35,652.31.

Q. Mr. Odell, beginning with January, 1913, can you tell me whether or not the number of depositors was increasing or decreasing in the Roseville Trust Company? A. Only to the best of my recollection.

Q. What is your recollection? A. That they were increasing.

Q. Is it your recollection that the increase was a steady one from January, 1913 on? A. No, not steadily, I don't think.

Q. What is your recollection as to whether or not the aggregate of the deposits, as reported to your executive committee week by week by Mr. Raymond, E. Smith, was increasing or decreasing?

Mr. Whiting: May I ask if those reports were made in writing?

Mr. Hinds: It does not appear so, I believe perhaps the witness can say.

Mr. Whiting: It seems to me they should speak for themselves, your Honor.

Mr. Hinds: Well, I am asking the wit-

ness for a general statement, even if it should appear from the report.

The Court: He is stating the contents of a report; I understood him to say that these weekly reports were printed.

Mr. Hinds: I do not think so, your Honor.

The Court: Well, that is what he stated.

Mr. Hinds: I am not referring to the reports made to the Banking Department.

The Court: What are you referring to?

Mr. Hinds: I refer to the report which Mr. Smith made from week to week to the executive committee, as to whether the aggregate of deposits was on the increase or was on the decrease.

The Court: But the witness has stated, unless I misunderstood him, that these reports were printed. Well, then they speak for themselves.

Q. Do you mean typewritten? A. Typewritten.

The Court: The witness used the word "printed." Now by printed you mean typewritten.

A. Typewritten, yes, sir.

Q. Now is it not a fact also that at least in so far as those reports contain or purport to contain the aggregate of deposits they were put into the minutes week by week? A. Yes, it was the intention of the executive committee that they be put in here.

Q. Will you refresh your recollection from those minutes and tell me—

The Court: The minutes will speak for themselves. Have the minutes been put in evidence?

Mr. Hinds: They have.

The Court: Then they speak for themselves.

Mr. Cornish: No, only one minute was offered.

Mr. Hinds: Then I offer the minutes as a whole in evidence; they have been identified. The minutes of the directors meeting and executive meeting, which are bound in one volume, and also of the stockholders meeting. This bunch of papers which I hold in my hand is a part of the serial number pages which became detached from the book, and that, Mr. Odell, is a part of the minute book, is it not?

A. Yes.

The Court: Let that detached portion be marked by the same exhibit number.

Marked Exhibit C-8.

Q. Now, it is a matter of demonstration that the aggregate of deposits as reported from week to week, and as they are typewriten in the minutes, was on the decrease. I ask you whether that fact was the subject of discussion by your board of directors at any time, or the executive committee, in conjunction with the fact that the number of depositors was on the increase? A. Yes, sir.

Q. Tell us when that was discussed, and by whom? A. I cannot tell when it was discussed, but it was discussed between Mr. Smith and my-

self virtually every morning, and also at the regular meetings, which occurred I think on Tuesday, with the executive board.

Q. Was it ever discussed by the Board of Directors? A. They also had these weekly printed reports.

Q. Was the fact discussed that while the number of depositors was increasing the aggregate of deposits was decreasing? A. Yes.

Q. By the board of directors? A. I believe so, to the best of my knowledge.

Q. Did you ever hear at any meeting of the board of directors any member of the board ask for any substantiation of any report submitted by Mr. Smith, or statement made by Mr. Smith to the board respecting the condition of the bank? A. No.

Q. Did you ever hear any member of the executive committee ask for such substantiation at a meeting of the executive committee? A. Yes, sir.

Q. When? A. I cannot say when, but at some of the meetings.

Q. What was the occasion of the request, and what were the circumstances? A. Why a member of the directors would ask to see the general ledger, especially Mr. William J. Banister who now is dead, he was very particular that way; he used to look it over casually of course.

Q. Can you recall to what particular features of the general ledger his request had to do? A. I cannot; I didn't know what he was looking at; he was looking at the ledger.

Q. Do you recall whether he made any statement to the other members of the committee as to what he found by his examination? A. No.

Q. Do you recall any other member of the executive committee having made any such request or such examination for the purpose of substantiating Mr. Smtih's statements? A. You mean at the meetings, or any time through the week?

Q. My question now has to do with meetings? A. No.

Q. Now do you remember any of the directors or any of the executive Committee having made any such request, or made any such examination at any time? A. Yes.

Q. Tell us when and who? A. Why, by myself, very often I would stop in there Saturdays and count over the cash and find that it agreed with the teller's cash.

Q. Having counted it would you compare your results with anything? A. With the teller's books, yes, with the blotter.

Q. Would you compare the result with what was shown on the general ledger? A. Well, I won't say for a certainty that I did, I think I did, I won't say for a certainty.

Q. You didn't do that on June 4, 1913? A. Not to my recollection; I cannot recollect any particular date that I did so.

Q. But you know you did not do it on the date of June 4, 1913 report, do you not, to which you swore on that date? A. I wouldn't say I hadn't, because I didn't compare those figures; I might have counted the cash and found it agreed with the general ledger and not agreed with the report; I don't think I did, but I do not fully remember though.

Q. Well, now, it is a fact, is it not, that you signed this report on the 14th day of June, 1913?

A. I suppose it is if that is the date down there, I signed it the day it is dated I think.

Q. Well then do you desire to correct your statement that you counted the cash on the occasion of this report? A. I didn't say that I did count it.

Q. I understood that you did? A. No, sir, I said I might have counted it that day.

Q. Do you know of any instance where any of the directors or any of the members of the executive committee, whether acting individually or members of any committees, or in any capacity, made up an aggregate of the individual deposit balances in the Trust Company and compared it with what was shown on the general ledger? A. I know myself that I went over once or twice and took off on a Burrows Adding machine the balance, but any other directors I don't know, outside of the examining committee.

Q. When did you do that? A. I can't tell you when, I know the fact that I did.

Q. Who manipulated the adding machine? A. I did.

Q. Did you make all of the extensions from the deposit ledgers to the machine yourself? A. Took the daily balance showing the different accounts.

Q. Did you take off the total from the machine yourself? A. Took the total off, yes, sir.

Q. Did you compare that total with the total shown in the general ledger? A. Yes, sir.

Q. You say you cannot remember when that was? A. I cannot remember just when it was.

Q. Was it after January first, 1912, can you say that? A. No, I think it was previous to that.

Q. Subsequent to January first, 1912 did you or did any other director or member of the executive committee to your knowledge perform that operation? A. Not to my actual knowledge, no.

Q. So far as you know did any of the directors or members of the executive committee after January first, 1913 cause that operation to be performed under his or their supervision? A. They may have but I cannot recollect the fact.

Q. Have you any knowledge as to whether the aggregate of the individual deposits on June 4, 1913 was as shown in your report marked Exhibit C-5? A. No, sir.

Q. You don't know one way or the other? A. No, sir.

Q. Was it ever discussed at any meeting of the board of directors that Mr. Smith was engaged in outside businesses; was that ever a subject of discussion? A. I don't think it was, not to my knowledge.

Q. Was his being engaged in outside business, if such was the fact, ever the subject of discussion at a meeting of the executive committee? A. I don't think so, no, sir.

Q. To your knowledge was it ever discussed by any of the directors or members of the executive committee? A. Only, so far as I know of, between Mr. Fairlie and myself.

Q. When was that? A. Oh, at different times.

Q. You knew, did you not, that Mr. Smith was engaged in outside enterprises? A. No, sir, only so far as selling an automobile or two, that was our conversation Mr. Fairlie and myself had.

Q. Didn't you know that he was proprietor of

the Oakland Motor Sales Company? A. I did not; never heard of the concern.

Q. Did you know he was officer and director of the Home Ice & Products Company? A. I did not.

Q. Or any other outside company? A. No, sir.

Q. What is the fact as to whether or not the Trust Company from time to time found itself short of cash for its daily operations? A. I don't know what you mean by the first part of that question "What is the fact."

Q. Is it a fact that it did, or is it a fact that it never did find itself short of cash for its daily operations? A. It certainly was short of cash at different times.

Q. When did you first observe that to be a fact? A. Well, I cannot say for a certainly, but I think it was about, well, I can't say for a certainty, it must have been somewhere the latter part of 1912 or first part of 1913, something like that.

Q. Did that condition grow worse or did it improve or did it stay the same? A. Why I think it more or less stayed about the same, it may have grown a little worse.

Q. Tell us in a little more detail what you found to be the fact and how you learned it? A. Why I learned it from Mr. Smith, when I would call there mornings he would tell me they were pretty short of funds; I would say what was the matter; he would say "There have been heavy withdrawals yesterday," and there were two or three large accounts there which if they drew heavily it would affect the balance, take McCre-

ery & Company, they carried heavy accounts, and H. B. Claflin had large accounts, and they were withdrawing it, using it in their own business I suppose; that would make the Trust Company short on cash, and there wasn't enough deposits to cover the difference, and possibly with other accounts, not only those specifically.

Q. Did you bring these facts to the attention of the executive committee? A. I did.

Q. Just as you stated it to me, substantially? A. Just about the same, yes.

Q. Did you bring up, or did anybody in your presence bring those facts to the attention of the board of directors? A. Did anybody in my presence? I would be the one that would do it.

Q. Did you? A. Why it was discussed at the full board meetings I think; the reports themselves show what the withdrawals were each and every day, that the full board had.

Q. Did you make any investigation other than a mere looking at the totals of deposits, as reported, to see whether or not there had been withdrawals reported by Mr. Smith as his explanation of this shortage; I refer of course to unusual withdrawals? A. Well, I knew that Claflin & Company was, because I withdrew them myself; but the McCreery Company, I looked at the ledger and saw that they were decreasing their balance.

Q. Was that done on each of the occasions when this condition of shortage came to your attention? A. No, I cannot say it was.

Q. Now what measures did you take to correct this condition of shortage, what immediate measures did you take? A. At what time do you have reference now?

Mr. Fairlie: This witness is not a defendant to complainant's bill of complaint. On behalf of the other defendants whom I represent I cannot see that it is material what this witness did in his own personal conduct in relation to the bank's affairs; it has nothing to do with the other defendants, as I can see it.

Mr. Hinds: Then why do you object if you do not represent all the other defendants?

Mr. Fairlie: I object; I represent three of the others.

The Court: I think the evidence is directed to the point of showing how the company transacted its business; I do not see any objection to it.

Mr. McCarter: Of course in a case like this where there are a great many different defendants things will be brought out which will be perhaps immaterial and not binding upon certain defendants until connected with them. Now my understanding is, and I want to be corrected if I am wrong, that it will not be necessary for us to object when these different facts are brought out, but the Court will deal with it when it comes to measure the different liability of the different defendants.

Mr. Delaney: That is especially so as to my representing the defendant Bataille as I mentioned before, because he got out, resigned in September, 1910.

The Court: This evidence will be confined to those against whom it can be

properly used, and it will be so confined whether there is objection or whether there is not. For instance, one of the directors makes a statement which is injurious to himself; it may relate to other directors, it may include those other directors, but it would not be evidence against anybody but himself.

Q. (Question read.) A. To the best of my recollection one measure that was taken was a reduction or a selling of some of the mortgages, which could be accomplished very quickly; another question was, I think, we were paying the banks six per cent for some loans, and whereas we were only getting five per cent on the mortgages, and my recollection is that was one resolution passed.

Q. Did you personally come to the aid of the Trust Company on any of the occasions when it was short of cash? A. I did.

Q. In what manner? A. By depositing making my deposits still heavier there, depositing cash with them.

Q. You mean the deposits of Claflin & Company? A. No, sir, my own personal deposits.

Q. Did you ever come to the rescue with any Claflin deposits on such occasions? A. Not particularly; I had the placing of the Claflin deposits.

Q. Did you bring it to the attention of the executive committee that you had come to the rescue on the occasion of and because of any of these conditions of shortage? A. I think I may have.

Q. Other than your own report as to withdrawals of Claflin causing this shortage, or Mc-

Creery causing this shortage, when such was the fact, was there any investigation made by the executive committee or by the directors to substantiate the explanations of Mr. Smith that the shortage was occasioned by withdrawals of deposits? A. There were other deposits withdrawn besides Claflin and McCreery, they were not the only ones.

Q. (Question read.) A. No, I think not, no, sir.

Q. Will you turn to the minutes in the month of January, 1912 and tell me whom you appointed as an examining committee on that occasion for the year 1912?

Mr. Stiefel: While the witness is looking for that. You used the word "shortage" I suppose you did not mean to say that the funds were less than the books showed.

Mr. Hinds: I used that term to indicate only the lack of cash legitimately appearing on the books; I do not mean to imply that the other condition did not also exist.

Q. Whom did you appoint and what was the date of the appointment? A. The date of the appointment was on January 9, 1912; the following committees were appointed by the president to serve the coming year: Examining Committee: Messrs. E. K. Sexton, chairman; J. B. Banister, William T. Benjamin, C. F. McCord, E. D. Dunn.

Q. Is that the committee which was the committee in April, 1912 to make the examination; can you say whether or not that committee served in April, 1912? A. I think they did.

Q. By looking at their report later you could say with certainty, could you not, if they made a report? A. Report of the Examining Committee of the Roseville Trust Company presented May 8, 1912.

Q. By whom is that signed? A. E. K. Sexton, chairman; W. T. Benjamin and Edward D. Dunn.

Q. Then that is a part of the same committee that you said you appointed in January? A. Yes, sir, three of the five.

Mr. Hinds: Now if your Honor please, I have another amendment to ask for, and this is the only remaining one that I have in mind at this time. I should like to amend the bill so as to conform to the proof that that examining committee reported, and that at the time of their examination the condition of the ledger was as it has been shown in a transcript which I have served upon each of the original defendants with a statement that I would make this request for an amendment at this time, and I ask to be permitted to so amend and to include a statement which I now hand to the stenographer as part of the amended bill. Of course I cannot offer this in evidence; I merely offer it as a part of the bill of complaint.

Mr. German: Do I understand that the complainant is to amend his bill and serve a copy of it on the defendants.

The Court: They ought to, of course.

Mr. Hinds: I already served this on the defendants, with the statement that I would ask to amend in that respect.

Mr. German: I am talking about the amended bill itself.

Mr. Hinds: There is no amended bill other than as I am being permitted to amend it now.

The Court: You will have to reduce your amendment to proper form and file it. I do not know of any way of amending a bill by merely getting up and saying that you amend it.

Mr. Hinds: Well, then with the Court permission I will do that at a convenient subsequent date, and ask now to have this statement marked as having been referred to by me in my request to amend.

Mr. Fairlie: How is that statement as a part of this amendment—you said you would put in a statement, how is it headed?

Mr. Hinds: It is headed "Transcript of general ledger assets on April 6, April 8, April 9, April 10, April 11, April 12, with comments," and also another statement, the same date, of the liabilities.

Marked Exhibit C-9.

Q. At any time that any examining committee made its report was there any inquiry made by the board of directors or any of them that was not of any detail and did not appear on the written report as submitted? A. There might have been at the full board meetings.

Q. Can you recall in any instance what details of the subject covered by the report were discussed which did not appear on the reports themselves? A. I cannot.

Q. Can you recall whether any member of the board of directors ever inquired whether the examining committee had caused a total to be made of the individual deposit balances and compared that total with the general ledger figures after January 1st, 1912? A. No, sir, I cannot answer that.

Q. Your recollection is that no such inquiry was made? A. No, sir, I don't know of anybody asking that question.

Q. Now Mr. Odell, did you at any time attempt to reconcile any of the Trust Company's deposit accounts with its depository banks? A. No, I cannot say that I did.

Q. Do you know of such reconcilement having been made at any time by any director or member of the executive committee other than by the examining committee? A. No, sir, I cannot say that I recollect.

Q. It is a fact, is it not, that the securities which the Roseville Trust Company owned were locked up and accessible only to at least two of the directors or officers? A. Three.

Q. That is, it required the presence of at least three of them? A. It required any two of the three I think.

Q. Where were those locked up? A. In the Fidelity Insurance Company, Safe Deposit.

Q. It is also a fact, is it not, that the securities of the Roseville Trust Company were a small asset in comparison to its accounts with its depository banks? A. Yes, sir.

Mr. Whiting: I think the facts should be shown.

Q. I think that is a matter of demonstration

from the exhibits already in evidence. Was it ever a matter of discussion by the board of directors or the executive committee that the asset of securities should be available only upon the presence at the vault of two officers out of three, while the asset of deposits in depositories should be subject to the withdrawal of the one man Smith? A. Never any comment on it.

Q. Now it is a fact, is it not, that your information as to the condition at all times of the affairs of the Roseville Trust Company was the information conveyed to you either verbally or in writing by Raymond E. Smith, on whose word you placed complete reliance? A. The majority of the times, yes, sir.

Q. That is true also of the entire board of directors, is it not?

Mr. Stiefel: I object.

Q. So far as you know?

Mr. Cornish: I object.

A. I cannot say what they thought about it.

Mr. Hinds: Now if your Honor please, I have in my hand quite a formidable bundle of correspondence, all of which has been printed in the bill, and I am going to ask this witness to identify it in bulk as having been either received by him or written by him in behalf of the Trust Company; it is all correspondence between the Department and the bank, and perhaps we can short cut in this way, and while he is doing that, and to save time, I will say that with the Court's permission, and with the privilege of recalling this witness, I would like to suspend at this

point as having constituted his examination on preliminary general matters. I shall have occasion to recall this witness later on certain detail matters which do not logically come in at this point of the case; so when he has identified those papers I will turn him over for cross-examination.

A. Here is one letter here which is the same thing that has been identified, that is that May ninth or May fourteenth.

Q. Well, overlook that. A. There are a whole lot of them here.

Q. Well never mind those. Have you been able to identify all those papers as having been received or sent by you, as the case may be? A. I take it for granted these are authentic papers.

Mr. Hinds: I offer them in evidence, and state that they are the papers shown in the bill, and I think between them they comprise all the letters or telegrams that passed between the Department and the bank, as shown in the bill, and they are all marked Exhibit I in the bill.

Marked Exhibits C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-17, C-18, C-19, C-19a, C-19b, C-19c, C-19d and C-19e.

CROSS-EXAMINATION by Mr. Fairlie:

Q. When the minute book was first offered to you you wanted to make some explanation concerning it which you were not permitted to do; what was the explanation you wanted to make in regard to the minute book? A. The explanation was this that I know and, more or less, we

all know what kind of a man Smith was, or at least we found out, and I cannot say for actual fact that these minutes are the minutes of the different meetings; he hypothecated everything in the way of writing and reading; I take it for granted they are but there is no way of telling.

Q. Since the institution was closed by the Banking Department have you acquired any personal knowledge of Mr. Smith having substituted pages and altered these books? A. Yes, sir.

Q. In many instances? A. I believe so, in many instances.

Q. So that when you identify the general ledger are you willing to swear that the page which shows the general ledger account for June 4, 1913 is the same page which was there at the time that report was signed?

Mr. Hinds: Just a moment, I object, first on the ground that—I understood your previous question had to do with the minute book or with all the books?

Q. The previous question was the minute book.

Mr. Hinds: I object to this question first on the ground that no foundation has been laid for a question respecting the general ledger.

Mr. Fairlie: No other foundation than your own examination of the witness.

Mr. Hinds: And second, on the ground that it is not relevant or material what the witness is willing to swear to, he having already testified as to the identity of the general ledger and as to its contents.

Mr. Fairlie: I will withdraw the question.

Q. When you identied the general ledger did you mean to identify every page of it as being the same pages which were there continuously from the time the general ledger was started? A. No, sir.

Q. Is it a loose leaf ledger? A. I believe not, I think not, no, sir.

Q. Do you know of alterations having been made in that general ledger? A. Yes, sir.

Q. You were asked about the books the company kept, whether the general ledger, you were asked, controlled the other books, and you answered yes; what did you mean by the general ledger controlling the other books? A. I meant with the general balance of the other books, that was the general balance book.

Q. The summary? A. Summary, yes.

Q. And is kept merely as a matter of convenience? A. I wouldn't want to say necessarily so, no.

Q. You were asked whether you relied upon any examinations other than those of the examining committees which you appointed; did the Banking Department make examinations? A. Two every year, some times three, I think it made three.

Q. Did you rely on those? A. I certainly did, those were the ones I fully relied on.

Q. After this letter which was put in evidence from the Banking Department concerning Smith's irregularities in connection with the Nones loan, did the Banking Department ever report any further irregularities on Smith's part?

Mr. Hinds: I object to that your Honor, first, on the ground that it is not competent, in that it purports to show the contents of written statements already, by the way, in evidence; second ground is that it is irrelevant what the Banking Department may or may not have done, and has no bearing whatsoever on these issues.

The Court: I see no objection to the question.

Mr. Hinds: I ask an exception.

Q. (Question read.) A. Well, the letter itself, the Nones letter itself that you have reference to covered other irregularities.

Q. After that letter? A. After that letter I do not remember that they ever did.

Q. At the time the general board considered Mr. Smith's resignation, at that meeting did Mr. Smith appear in person? A. He did.

Q. What did he say to the board, if anything? A. He made a full confession of what he had done, and went over the transaction of Nones very specifically, said that Nones was an old school mate and old friend of his, and he just done it out of pure friendship, and the thing would never occur again, and after he made his full explanation why he offered his resignation, which was accepted.

Q. Was it a very full explanation? A. A very full explanation.

Q. Took him longer to say it than it has taken you to say it? A. Much longer and a great deal more of it.

Q. Did the members of the board then and there express anything by way of indicating that they were satisfied with his explanation?

Mr. Hinds: I object on the ground that the question is leading.

The Court: I think the better form of question would be what observations were made at that time upon Mr. Smith's statement.

A. I think the general board had discussion of an hour or more there in the evening over what he said, *pro* and *con,* about the matter, and came to the decision which they evidently did come to.

Q. Was anything said about his general manner and frankness, etc.? A. Oh, a great deal; I cannot say just what, of course it was incidental, between each other, it was not general.

Q. Was anything said about the institution being new and the seriousness of changing managers at that stage of its history? A. More or less on that line.

Q. What was said? A. I cannot specify just exactly what was said, it was a general conversation.

Q. Was anything said about Mr. Smith's past record, so far as the members of the board knew of it? A. Yes, that I am certain of.

Q. Had members of the board made investigation of his past record? A. They had made, I believe, an investigation before he was selected to be one of the incorporators.

By the Court: Q. What was his age, about? A. I should say thirty-eight, I am not certain; he was a youngish looking man.

Q. You spoke of attendance at the bank Monday evenings and Saturday mornings, were you as a rule there Monday evenings and Saturday

mornings? A. As a rule the majority of the Monday evenings I was there and I was there not only Saturday mornings but every morning as a usual thing, very few mornings I was not there.

Q. Did you ever stop in at the bank more than once a day? A. No, I can't say, outside of the day of the executive or full board meetings I would stop there twice a day, in the morning and at four o'clock in the afternoon.

CROSS-EXAMINATION by Mr. German:

Q. In your direct-examination you stated that this letter of May 14, 1909 from the Commissioner to yourself was read by each director? A. I don't think I said that; I said it was read to the directors.

Q. You mean to the directors who were at the meeting of June 21, 1909, which is on page 85 of the bill, and which is the meeting at which this letter of Mr. Lewis's was discussed? A. Well, now that you call my attention to it I do remember that that letter had got into the hands of other directors, it had before that meeting, the meeting being so far after, as I remember, after the date of the letter.

Q. The minutes don't show the presence of William F. Keim, one of the directors, at this meeting; do you say you had yourself personally read this letter to him? A. I think he was there.

Q. No, he wasn't there. Now I say, he not being there, would you state— A. No, I wouldn't state that I did personally read it to him.

Q. Did anything ever appear by any of the reports of the examining committee which caused a

suspicion in your minds that the reports were not correct?

Mr. Hinds: I object on the ground that suspicion which came to the mind of this witness is not relevant, certainly as against the complainant. This gentleman is not one of the original defendants, we have not sued him, and his suspicions are not relevant.

The Court: I think I will let the question be asked subject to your objection.

Q. (Question read.) A. No, sir.

Q. Did anything ever appear by the books as you examined them that would cause suspicion to your mind that the accounts were not regularly kept? A. No, sir.

Q. Did any report by any committee of the affairs of the bank ever cause any suspicion in your mind? A. No, sir.

Q. That the affairs were not being regularly conducted? A. No, sir.

Q. Other than the communications from the Department of Banking and Insurance that matters were not going according to the Commissioner's will, did you have any suspicions that things were not going on as they should be in the bank?

Mr. Hinds: I must renew my objection as to the suspicion of this witness, particularly when his lack of suspicion is not shown to have been communicated to the defendants, this examination proceeding almost entirely on the line of his suspicion.

The Court: It does not strike me that

the evidence is of much consequence, but I will let you ask the question.

Q. (Question read.) A. No, sir.

Q. What did you do, so far as was in your power as president of this bank, to rectify these matters that were brought to your attention by the Commissioner? A. Why I kept in communication and strict watch on Smith, to see that they were attended to, and a majority of them were rectified and so reported to the Commissioner, and the majority of them were evidently accepted by him because I didn't get any replies to my letters.

Q. And are those communications that you made to the Commissioner among the letters that were offered in evidence? A. They are some of them, I suppose all of them, I don't know.

Mr. Hinds: I think we have put them all in evidence, as shown in the bill, and we have attempted to set forth the entire correspondence between the Department and the bank.

Judge Collins: Did you put in all there are?

Mr. Hinds: All we have been able to find, and I think they are all.

CROSS-EXAMINATION by Mr. Whiting:

Q. You were president of the company? A. Yes, sir.

Q. You spoke of some of the employes of the concern, Mr. Smith was one, and you named some others, the teller Mr. Jennings I think you said. Was there another teller? A. There

was the bookkeeper, he acted as teller some times too, Thompson.

Q. And were there any other employes? A. Well, part of the time there was a stenographer, a woman that was, and then there was another assistant bookkeeper later on, I may not have mentioned him.

Q. When did he come on? A. My recollection is that he came on in 1912 maybe.

Q. The others were appointed prior to 1912? A. Yes, I am pretty sure, yes, from the inception of the company, 1909.

Q. And these appointments were made by whom, or by what authority, who made them? A. They were selected by the incorporators or Smith himself, one or the other, I don't know; they were there when I got there.

Q. The president was elected by the directors? A. Yes.

Q. And Mr. Smith was in office when you got there; is that right? A. No, sir; he was in office so far as acting as one of the incorporators, and then he was in office after the board of directors elected him, the same as I was.

Q. The board of directors elected you and elected Smith? A. Yes.

Q. Who elected or appointed these other employes to which you have referred? A. Smith I guess.

Q. Well, the board of directors did not? A. No, sir.

Q. They had nothing to do with that? A. No, sir.

Q. I note from the by-laws that one of your duties is described as follows: To submit a

report of the business of the company at each regular meeting of the board, and a complete report to the company for the year, and so on. You made such reports, did you? A. I did, yes, sir.

Q. Always in writing? A. Well, in typewritten form.

Q. Those reports appear with the minutes, do they? Were they filed? A. I think they ought to have been filed with the minutes; may have only been filed in a general way you know.

Q. I am quoting again from the by-laws as to your duties as president: From time to time you shall report to the directors all matters within your knowledge which the interests of the company may require to be brought to their notice. You were familiar with your duties of course as president? A. Yes, sir.

Q. And those reports which you said that you furnished to the board purport to cover just such matters as that, matters within your knowledge which the interests of the company required to be brought to the notice of the board? A. I believe so, yes.

Q. Were there any matters which you did not communicate to the board? A. No, sir.

Q. And all the matters which you did communicate to the board are set forth in your written report? A. I didn't say I gave any written report; printed, typewritten report of the condition of the bank; not any verbal report; I verbally reported to the full board very often.

Q. And you reported in accordance with your duties as to all matters which the interest of the company required to be reported? A. Verbally.

Q. Verbally or otherwise? A. Or otherwise.

Q. Did you ever report to the board any facts with respect to manipulations of the company's accounts, improper manipulation, falsifications, or anything of that nature? A. I didn't know of any until this indictment trial of mine came out.

Mr. Hinds: You mean other than the notice.

Q. I will except the notice, yes. A. Yes.

Q. Did you ever report anything to the board with respect to the lack of cash funds in the bank? A. What do you mean, cash funds?

Q. It has been brought out on your direct-examination that the cash on hand did not correspond with the amount of cash as it appeared in the general ledger. Did you ever report such fact to the board of directors? A. I didn't know it to report it, I wasn't conversant with it; I would if I had known it.

Q. But you did not make any such report? A. I did not, no, sir.

Q. When the matter of Commissioner Lewis's letter with respect to the Nones incident, and whatever that letter contained, when that matter came up I understand that an investigation was made by yourself and Mr. Fairlie? A. No, I didn't say so.

Q. I so understood you? A. No, sir.

Q. Mr. Odell and Mr. Fairlie, my note is.

Mr. Fairlie: As I recall the witness said they did talk to Mr. Smith about it.

A. Yes, if that is what you mean. I did not investigate the books; I took the actual facts from the Banker's report that such were the facts and acted on them.

Q. You got a letter from Commissioner Lewis? A. Yes.

Q. What did you do? A. The next morning Mr. Fairlie and I, and I think Mr. Munroe, came down and we went in and saw Smith at his desk, and we talked over the thing, and he was conversant—the majority of the matters had already been fixed up because the Commissioner had seen me previously to the time I got that letter from the Banking Department, the letter was a subsequent thing, and about everything had been settled up, the Nones matter had been paid and wiped off the books, and the correct figures put in books and everything corrected.

Q. That was all before the matter was brought to the attention of the full board? A. Yes.

Q. Then the matter came before the board? A. Didn't come before the full board until after the receipt of the Banking Department's letter.

Q. Then it came before the full board? A. You see the Banking Department specified a lot of other things besides the Nones matter. The Nones matter was cleaned up after the Banking Examiner saw me. He didn't say anything about these other little things that they wrote of in the fifteen or sixteen page letter; when they came in we commenced immediately to fix up those things they objected to, certain loans and certain way of keeping books, and this and that, and that was fixed up, and then there was a full board called right after that; I think the majority of the changes had been corrected and fixed up according to their request; of course there

were some that couldn't be fixed right away, but they were taken in hand, and everything in that letter was taken in hand to straighten up.

Q. At the board meeting I understand that Mr. Smith tendered his written resignation? A. This was a special meeting you know, special board meeting.

Q. And at that meeting of the board he tendered his resignation? A. Yes.

Q. What was the first action taken; wasn't it an acceptance of his resignation? A. Accepted the resignation, yes, sir. First he made his explanation and his plea for, I won't say mercy, but his plea for forgiveness for what he had done; he offered his resignation; we accepted it, and he left the room.

Q. Did you vote for his being restored to his position after the resignation had been accepted? A. I voted twice against it, but I didn't have much to say in the thing, there were eighteen or twenty against me, so the third time I went with the majority.

Q. Finally you voted with the majority? A. Yes; I think there were two votes against it, and I know one of them was my vote.

Q. And you had in mind of course the facts contained in the Commissioner's letter? A. Yes, more or less.

Q. You had in mind what you had learned by conversing with Mr. Smith? A. Well, I hadn't learned anything particularly detrimental to him outside of the letter.

Q. Why did you vote finally for him to be restored to his position? A. Well, to be restored?

Q. Yes. A. On account of, as I say, the majority, I went with the majority, that is all; I wasn't fully against it exactly, but I felt that it wasn't just the right thing to put him back again, but when the eighteen or nineteen were against me I voted with them to make it unanimous. There was no question about he should be elected unanimously, it was just a question they would keep on voting, and so they took a third vote and that third vote brought them all in, myself included; that was the end of it.

Q. Was there any particular spokesman who was advocating Mr. Smith being restored? A. No, nobody, no particular one.

Q. You testified with respect to making deposits yourself from time to time when the bank needed cash or seemed to need cash? A. Yes.

Q. Do you recall that you stated that you notified some of the directors, and I think you mentioned—no, you say "I may have notified other directors." You do not recall notifying Mr. Mott, for example, do you? A. Well, I think I said to Mr. Mott, "Well, I have got a good lot deposited here," or something like that.

Q. How did you come to say that? A. At the end of a full board meeting or an executive board meeting, he was on that, and as we walked over to the car, or something of that kind, and he was on his way home, we talked the situation over.

Q. Of the bank's condition? A. Yes, as it had been shown at the executive meeting, that the deposits were short and there had been more withdrawals, I should say, than had been

covered by the deposits, and the consequence was they were needing more money, and I would say I put in a good lot here, as much as I can; I kept my account up all the time.

CROSS-EXAMINATION by Mr. Cornish:

Q. I think that you testified on your direct-examination that you had a conference with Mr. Munroe and Mr. Appleton between the time you first received the letter of the Commissioner and the board meeting; is that so? A. No, sir.

Q. Mr. Appleton of the Department? A. Oh, between the time that the examination was made?

Q. Between the time you received the letter from the Commissioner and the time of the board meeting when Smith's resignation was presented? A. Not particularly, I may have talked the matter over but not particularly; I didn't testify to that.

Q. Wasn't there a conference between you and Mr. Munroe and Mr. Appleton at your house in regard to this Smith affair either before or after you received the letter from the Department? A. Before.

Q. Were there any facts disclosed in that conference in regard to Smith's actions which were not included in the letter from the Department? A. I cannot recall that there was.

Q. Then all the facts that the department— A. Well now, let me think a little. It runs in my head, to the best of my knowledge maybe Appleton did quote something about Smith, his previous position that he held up at the Second National Bank, something about that, that there had been fault found up there about him.

Q. Is that all? A. That is as near as I can remember, to the best of my knowledge.

Q. Did you make any inquiry at the Second National Bank in regard to the information that the Commissioner gave you? A. Not at the Second National Bank; I did a subsequent time, a year or two afterwards.

Q. After this board meeting at which Smith's resignation was accepted? A. Yes.

Q. Didn't you make any investigation of this matter that the Commissioner called to your attention, between the time of that conference and the time of the board meeting? A. Only so far as with Mr. Munroe, he may have made some.

Q. Did Mr. Munroe make an investigation? A. I don't know what Mr. Munroe done, but I know Mr. Munroe explained the position that Smith had had with the Second National Bank, etc.

Q. Explained to whom? A. To me, that is, in an indirect way, he said what Smith's, what he found out about Smith before he had taken him into the organization at all.

Q. What had he found out about him? A. Well, I couldn't exactly specify what he said; he said that Mr. Bonnell, who was president of that bank, and some other Judge or lawyer, knew Smith pretty well and had recommended him pretty highly, and all this; that is all I know.

Q. That is all the investigation you made after the agent of the Commissioner called to your attention there had been some fault found with Smith at the Second National Bank where he had been formerly employed? A. I didn't say there was any fault found at the Second National Bank; I am only speaking of the casual talk that

Appleton had; where Appleton got his information from I don't know; as I remember he said he got this information from going around examining different banks and trust companies.

Q. At any rate you made no further investigation? A. No, it was only just a gossip, talk; he couldn't substantiate anything; he said himself "I don't want to be brought into the matter."

Q. When you voted against him at the directors meeting did you have that in mind? A. I may have, I can't remember at the present time; that was eight or nine years ago.

Q. What did you have in mind when you voted against him. Did you consider him unfit to continue in that position? A. No, it was only just a general opinion, that is all.

Q. You did think you ought not to vote for him? A. Well, I wouldn't have voted against him if I hadn't thought so, and I may have changed my mind afterwards, I must have changed my mind afterwards.

Q. In your direct-examination you said that subsequent to the board meeting at which Smith was retained you made no charge in the method of checks on Smith; is that true? A. There was only one thing that I ever told him; I told him there was something in that letter about filling in the stub of the check books; I told him he must fill the stubs in the check books and paste them in there when they were received back, and I think that was carried out after that; that was one thing which wasn't done, and I remember that one; I don't know, there may have been some others, I don't know, that I told him about. If it had reference to that letter you are speak-

ing of, that Nones letter as we call it, why mostly all those things that were asked there I carried out, that is, told him, ordered him to carry them out, whether he did it or not; I think they were all carried out.

Q. You did not make any independent effort to check up Smith's work? A. Not individually Smith's work, no; the general work of the office occasionally I would look over.

Q. Did you know that Smith was keeping the general ledger? A. Yes.

Q. Did you know he was receiving money at the window? A. Yes.

Q. You were there every day, weren't you, nearly every day? A. Nearly every day, yes.

Q. And had occasion to know almost exactly what Smith was doing in connection with his management of the bank? A. Oh, no; I could see what he was doing bodily; I couldn't tell what he was doing mentally or physically.

Q. Well, you were there every day? A. Yes, but I didn't go over all the items of every day's transactions, and I wasn't there the whole time to see what he was doing; a good deal of his things were done mentally and not physically.

Q. Was the division of the duties of the different employes of the bank supervised by you at all? A. No, generally by Smith, he was the manager.

Q. You left that entirely to him? A. Left that entirely to him, yes.

By the Court: Q. You say he was manager; did he have that designation? A. No, sir, that went under the secretary and treasurership.

By the Court: Q. You mean he was perform-

ing the duties which as secretary and treasurer he was, according to the minutes, bound to do? A. Yes, sir.

By the Court: Q. That is all you mean by the term "manager"? A. The actual management of the concern inside, the inside work, and outside work too.

By the Court: Q. There was no separate office of manager? A. No, sir.

Q. Mr. Odell, how frequently did you deposit cash or make deposits to help out the Trust Company with respect to their daily cash? A. Oh, you mean large amounts?

Q. Large amounts? A. I was depositing all the time, but I suppose I made a half dozen large amounts there, running up to forty thousand dollars or more just at that time, just before it failed.

Q. How far back did those occurrences take place? A. I have no way of telling now, it must have been in the fall of 1912 maybe.

Q. Fall of 1912? A. It might have been, I can't say just when.

Q. Was it the practice of the treasurer to make checks payable to Claflin & Company and get the cash for them, checks drawn on his Albany bank, so that he would have funds to use for the two or three days that those checks were in transit? A. Well that requires quite a long explanation. There was no word of cash, it was country items, against country items, checked against country items.

Q. What is the explanation? A. The explanation was that Claflin were depositing nothing but country items, and he was turning over checks

against those banks in exchange or in payment of these country items which they deposited.

Q. Do you say that all the checks that he made to Claflin on the Albany bank of the Trust Company were made in payment of the country items that Claflin deposited there in the Trust Company? A. I think they were, to the best of my knowledge.

CROSS-EXAMINATION by Mr. Stiefel:

Q. How old are you? A. How old?

Q. Yes. A. I am fifty-eight.

Q. How many years were you employed by H. B. Claflin & Company? A. Over forty.

Q. And during the course of those forty years how many years were you treasurer? A. I wasn't treasurer; cashier.

Q. How many years cashier? A. Thirty years.

Q. In your position as cashier to what extent did you have control of the finances or moneys of H. B. Claflin & Company? A. I had full control of all the cash and everything, depositing checks, drawing checks, etc.

Q. You had lived in Roseville for a great many years? A. Twenty odd years.

Q. And were a property owner there? A. Yes.

Q. Do you know whether these facts were generally known to the board of directors of the Roseville Trust Company? A. I am sure they were.

Q. With regard to Mr. Fairlie whom you have mentioned, you were well acquainted with him? A. Yes.

Q. Was he a man of some years, in middle life? A. I think so, yes.

Q. Over forty? A. Yes.

Q. Do you know what his connection was, with what particular company in this city? A. Fairlie Wilson Coal Company.

Q. Do you know whether that is a large or a small concern? A. I do not.

Q. Do you know whether it is one of the largest concerns—don't you know it is one of the largest coal concerns in Newark here? A. No, I do not.

Q. You travel on the D. L. & W. do you not? A. Yes.

Q. Have you never noticed the pockets of the Fairlie & Wilson—

Mr. Hinds: I object to that as immaterial.

The Court: The witness says he does not know; why pursue the examination; you can easily prove that fact.

Mr. Stiefel: I am surprised at the statement, and I think in order to consider Mr. Odell's testimony in every phase it is necessary to understand his recollection and observation, etc.

The Court: You ask him whether he knows about the company and he says he does not; now what is the use of pursuing that?

Mr. Stiefel: He goes to New York every day and the Fairlie & Wilson coal pockets are in Harrison there.

The Court: Well, I come to Newark every day and see that sign, and I do not know anything about it.

Q. Well, a man living in Newark and purchasing coal can hardly fail to observe that. Well, I won't pursue the matter. Had you never been to Mr. Fairlie's place of business, Mr. Odell? A. What do you call his place of business?

Q. In the office of the Fairlie & Wilson Coal Company in Newark? A. Over there in Harrison?

Q. The pockets are in Harrison. A. I have been to his office here in Newark, yes.

Q. Mr. William J. Banister, was he a prominent merchant of Newark, do you know or not? A. I know his business. I don't know whether he was a prominent member or not; I was very little acquainted with Newark; I knew him personally; my business has always been in New York and not Newark.

Q. Now at the time of the failure of the Roseville Trust Company, or at the time it ceased to do business, how much money did you have on deposit there? A. You mean altogether, both accounts? There are two accounts there.

Q. Altogether, yes? A. I guess $42,000.

Q. Forty-two thousand dollars? A. Yes.

Q. And you were the owner of how many shares of the capital stock of said company? A. I virtually was the owner of one hundred shares or so, I think, or thirty shares, I can't just recollect how much it was now, that is a long time ago.

Q. Do I understand a hundred or thirty, which? A. I can't recollect how many shares.

Q. How many shares of the stock of the company did you own at the time of the first meeting of the incorporators, how many did you pur-

chase initially? A. I think it was fifty shares.

Q. This forty-one thousand dollars you surrendered for the release which was given to you by the Commissioner of Banking? A. Yes, sir.

Q. You have stated that you had absolute and placed full reliance in and upon Smith; is that correct? A. Yes, sir.

Q. And during the course of the period from the time of the meeting of June 21, 1909 up to the time the bank was closed did anything occur, as far as your observation and knowledge is concerned, which in any way caused to waiver or be impaired that reliance and faith that you had in Smith? A. No.

Q. How long before the closing of the bank was it that you increased your account to as much as $41,000? A. Closing of the bank?

Q. Yes. A. Why I think I increased the account the first part of 1913.

Q. The first part of 1913? A. Yes, sir.

Q. And from that time on up to the closing you kept your account around $40,000? A. Yes.

The Court: When was the closing?

Mr. Stiefel: In August, 1913.

Q. Can you tell us from your own knowledge whether or not the chairman of the examining committee, Mr. Sexton, received from the depository banks statements of the amount of deposits with those depository banks; can you tell us that? A. No, sir, I can't tell you that.

Q. You know nothing at all about that? A. No, sir.

Q. When you appointed Mr. Sexton as chairman of the examining committee did you just select him haphazard, or was there any reason for

your appointment of him? A. Oh, no, I had talked it over with Mr. Smith.

Q. With Mr. Smith? A. Yes.

Q. With anybody else? A. I may have with Mr. Fairlie, I can't know.

Q. With Mr. Fairlie? A. Yes.

Q. Did you know what Mr. Sexton's qualifications were for that position, chairman of the examining committee? A. Only so far as I knew what his business was, his education.

Q. Had you any reason to know whether or not he was a man of critical faculties and capable of analyzing and understanding accounts, complicated accounts, or anything like that? A. I had no reason to know it.

Q. Nothing of that sort? A. No, sir.

Q. How often did you appoint him as chairman of the examining committee? A. I cannot say.

Q. Cannot recall? A. Cannot recall.

Q. Was it Mr. Appleton who first brought to your attention the fact that Smith had made a loan to Nones, or whatever his name may be? A. Appleton was the first one that brought that to my attention.

Q. Do you remember whether on the day on which that occurred Appleton had been up in Montclair and came down from Montclair to your home in Roseville? A. I think he said so, that he had, that evening when he called, that he just came down from Montclair.

Q. Can you tell us whether Smith had brought the matter to Appleton's attention or Appleton had charged Smith with the matter; do you know anything about that? A. No, only so far as the letter says.

Q. Now you have testified to the best of your recollection that you voted no twice, in contrast with the greater number of the directors, when the Smith retention matter was up. Just let me see whether I cannot by bringing this to your attention perhaps refresh your recollection on that. I am reading from the letter signed by you, written to Vivian M. Lewis on June 21, 1909: The directors thoroughly discussed the letter of the Commissioner of Banking and Insurance and decided to have an informal secret ballot taken on the resignation of secretary treasurer Raymond E. Smith; the result of the ballot was without a dissenting vote against the acceptance of Mr. Smith's resignation as secretary and treasurer of the Roseville Trust Company. A motion was then made by director Scarlett, and seconded by director Banister that Raymond E. Smith be retained as secretary and treasurer of the Roseville Trust Company; the motion being put it was unanimously carried. Do you think still, after reading what you wrote at that time, that your account given, as I know, to the best of your recollection here today is a correct account? A. Yes, sir.

Q. After the matter had been brought to your attention by this bank examiner Appleton you had a conference with Mr. Fairlie with regard to the matter, did you not? A. I had conferences with Mr. Fairlie in regard to a good many matters. To a matter, you said.

Q. With regard to that particular matter? A. I may have, yes, certainly.

Q. I would like to know a little more definitely than that if I can. Didn't I understand you to

say so this morning? A. Why certainly we talked it over between us; the next morning I saw Mr. Fairlie at the bank.

Q. And you spoke to him about it? A. Sure, I brought the question up right away; it was late that night when Mr. Munroe and I got through, somewhere around eleven or twelve o'clock, and the first thing in the morning I saw Mr. Fairlie and told him what Mr. Appleton had said.

Q. This was some days before you received this letter in May, 1909, some days before you received that letter? A. Two days, right after the examination or the next day after the examination; the examination was made in March I think.

Q. Do you remember what was the attitude of Mr. Fairlie on that occasion? A. I don't know as I quite understand your question. What attitude, what do you mean, what kind of an attitude?

Q. What he said, how he expressed himself? A. He was very much surprised that Smith should do such a thing; we went right in and saw Mr. Smith; Mr. Munroe was present at the same time too.

Q. Do you know whether Mr. Fairlie was eventually satisfied with Mr. Smith's explanation or not? A. I don't know what his opinion was about it.

Q. Was he the other man who voted no, do you know? A. I don't know personally, no, sir, I don't know actually.

Q. Now with regard to the books of the concern, how large was the banking office? A. I

should think twenty-five by sixty maybe, that is a guess.

Q. And part of that was for the depositors and other strangers coming to the bank and part for the clerks inside of the cage, and the books were kept in the cage, were they? A. Yes, sir.

Q. And the cage occupied approximately one half of the banking house? A. Fully that.

Q. And the books were lying there on the desks and tables all the time, were they? A. Usually, yes, sir.

Q. And open to the inspection of everybody, as far as you know? A. I won't say they were always lying on the tables; they were in the safe, but the safe was open.

Q. They were accessible there? A. Yes, sir, certainly.

Q. And there was no endeavor to conceal anything? A. No, sir.

Q. Do you recall at the executive meetings the production of the general ledger and other books, and discussions by you in the presence of the members of the executive committee of the condition of the bank, with the books right there in front of you? A. The books always laid right on the table before the executive committee, but I wasn't the only one that discussed it, it was discussed by the whole executive committee, and the books were also there at the full board meeting and could be discussed.

Q. You being at the bank every day were more familiar with the books than other members of the executive committee? A. Not necessarily so, no, sir.

Q. Was there any other officer that attended at

the bank every day? A. Mr. Fairlie usually stopped in every day.

Q. He was also a member of the executive committee? A. Yes.

Q. Did Mr. Foster stop in? A. Occasionally but not every day.

Q. But those were the only three that were there either every day or quite frequently? A. No, Mr. Munroe was there every day I guess, more or less; I couldn't say who was there every day, but they came in very often, the directors did.

Q. And there would be a full, free and frank discussion of the contents of those books and the condition of the bank in the presence of Mr. Smith and the other members of the executive committee once a week as a general rule? A. Yes, and once a month at the full board.

Q. And the books would be there? A. Accessible.

Q. The books would be there and accessible? A. Yes.

Q. Never any attempt on the part of anybody to conceal an examination of the books or do anything which looked that way? A. No, I don't think so, not to the best of my knowledge.

CROSS-EXAMINATION by Mr. Judge Collins:

Q. It is a fact, is it not, that neither yourself or any of the directors, committeemen, had any compensation, you were not compensated for your services? A. I think Mr. Foster was compensated a little bit at one time; that was one thing we took up at a meeting, that Mr. Foster having a little more time to himself could spend

a little time at the bank so Smith could get out and get in new accounts and make some collections so as to help us out in our deposits, and Foster did come in, and I think he got a dollar a day for a while.

Q. With that exception none of you had any compensation? A. No, sir.

Q. It appears that the deposits decreased in the aggregate and that the depositors increased. I ask if it is not a fact that the increase of deposits was largely due to new accounts that were household accounts and small saving accounts, very small in amount? A. I think Mr. Smith so testified to us.

Mr. Hinds: One moment. I object on the ground that this is a matter which shall be brought out from the books primarily, and unless the question is based on knowledge of the books it is objectionable.

The Court: I do not see any objection to the question.

Q. It is a fact is it, as you say? A. So stated by Smith.

Q. Is it also a fact—

The Court: He does not say it is a fact; he says it was stated by Smith to be so.

Q. So stated by Smith? A. Yes.

Q. At the meetings of the board? A. At the meetings of the board, yes.

Q. Did he also state that the decrease in deposits was due to the stringent money conditions, that many customers who usually had large balances were drawing more money than they had been in the habit of doing, and in consequence their balances were lower? A. Yes, sir.

CROSS-EXAMINATION by Mr. Munroe:

Q. Mr. Odell, so far as your observation went was Mr. Smith usually at the bank during banking hours? A. So far as it went he was always there, yes, outside of his vacation time of course.

Q. How much vacation did he have? A. Well, I think the first few years he took a week off at different times, two weeks, maybe, a year something of that kind, I can't just say.

Q. Never any lengthy vacation? A. No.

Q. And then when the force of the bank was small did Mr. Smith take a hand in practically every part of the banking business? A. He did yes.

Q. In the conduct of the institution? A. He did.

Q. Did he fill in wherever there was a need for somebody? A. Yes, sir.

Q. And was the same true of others; the teller would relieve Mr. Smith? A. Yes.

Q. And they all relieved each other? A. Yes, sir.

Q. Do you remember at what time the account of the Claflin and McCreery firms was considerably reduced in the average balance? A. I think beginning with the first part of 1913.

Q. How serious was that reduction in amount? A. The two together you mean, in the aggregate?

Q. Yes. A. Why I think maybe two hundred and sixty or three hundred thousand dollars, maybe, I am only speaking from recollection.

Q. Was this about the time that has been referred to as the time when the working cash balance had to be rather narrow? A. Part of the time.

Q. Was this about the time that the total deposits were being reduced in volume? A. I think so, yes, sir.

Q. And in your opinion did that affect the bank in any degree, if the total deposits were smaller than they would naturally have been according to the gradual development of the deposits of the bank? A. No doubt it materially affected it.

Q. Do you know whether this Nones transaction was confessed by Mr. Smith or whether it was discovered on the examination? A. So far as my recollection goes I think it was discovered by the examiner, I cannot say for a certainty whether it was or not.

Q. Stop and think about that a moment. A. I cannot say.

Q. You do not recall clearly about that? A. I do not recall the fact.

Q. Do you recall whether or not Mr. Smith went to Mr. Appleton and made a statement about this before Mr. Appleton got to that part of the books?

The Court: Was this witness present?

Mr. Munroe: No, but Mr. Appleton told Mr. Odell in my presence, and Mr. Smith told him in my presence.

The Court: That is a very different question; I think you better confine the examination to the knowledge of this witness.

Mr. Munroe: I was just trying to test his knowledge; of course it is a good while ago and details are apt to slip one's thought after so long a time.

Q. Were the suggestions and criticisms of the

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Banking Department made to the board carried out by the board?

The Court: Well, the witness has stated that over and over again.

Q. Was there at any time any objection by the Banking Department to the way the general ledger was kept?

Mr. Hinds: I object to that, if your Honor please.

The Court: Well, the communications were all in writing, were they not?

Mr. Hinds: That is the basis of my objection.

The Court: I do not think that that is a question that ought to be put to this witness; he cannot recall what is in those letters; the communications were all in writing and they speak for themselves.

Mr. Munroe: I do not think they were all in writing.

The Court: Any communication by Mr. Lewis to this witness, of course you can bring that out.

Q. Didn't you have various talks with the Bank Examiners from time to time about matters that were not necessarily included in these letters? A. Incidentally, when they were making examinations there.

Q. Was there any criticism—I will repeat the question subject to objection—was there any criticism at any time about Mr. Smith keeping the general ledger? A. No, sir.

Q. On the part of the Banking Department? A. No, sir.

Q. You spoke of the fact that there were certain

stubs which were not filled out; you spoke of check stubs; did you mean check stubs? A. Yes, sir, check stubs; was brought to my attention by the Bank Department's letter or Mr. Appleton.

Q. Were there some drafts, book in which drafts were? A. Drafts stubs, yes, on the corresponding banks.

Q. It was not really the check book, treasurer's check book, but it was the— A. Corresponding banks.

April 12th, 1917.

WILLIAM P. ODELL, re-called:

Cross-examination by Mr. Munroe:

Q. Did you have occasion to keep in touch with the amount of cash from day to day in order that you might know how much you could draw from the Claflin account for instance? A. Yes, sir.

Q. You had a report ever day on that matter, did you not? A. More or less every day, yes, sir.

Q. In your testimony yesterday, as I understood you, you said that the directors accepted Mr. Smith's resignation and then he left the room. I call your attention to the minutes of that meeting at which Mr. Sexton was secretary *pro tem,* and ask you to refresh your recollection on that point. "Resignation of secretary treasurer Raymond E. Smith was read as follows."

Mr. Whiting: Should not that be read into the record?

Q. "The resignation of secretary treasurer Raymond E. Smith was read as follows: (Then follows the resignation) Directors thoroughly discussed the letter of the Commissioner of Banking and Insurance and decided to have an informal secret ballot taken on the resignation of secretary treasurer Raymond E. Smith. The result of the ballot was without a dissenting vote against the acceptance of Mr. Smith's resignation as secretary and treasurer of the Roseville Trust Company." Now when you testified that the resignation of Mr. Smith was accepted did you mean that the paper on which he had written his resignation was handed by Mr. Smith to yourself as chairman of the meeting, accepted by you, and that he then retired while the matter was discussed? A. Well, I think I testified to the best of my belief and knowledge when I said accepted.

Q. It was your thought then that it was really accepted? A. I think it was, yes, sir: I can't say whether it was accepted, the resignation was accepted, or whether the whole board accepted it or not.

Q. Well now, refreshing your recollection from the minutes what is your recollection? A. I should say it was not accepted by them, only just received by them but not accepted.

Q. You used the expression once or twice yesterday that the cash was short; what did you mean by that? A. I used the expression the cash was short.

Q. Did you mean that the amount of cash

was below the legal margin required by law, or simply that there was a shortage of cash for the accommodation, for customers? A. Actual shortage of funds on hand to meet the—over and above the fifteen per cent of course, actual shortage of funds on hand over and above the required amount.

Q. Not enough to meet the demands of the customers of the bank? A. Meet the actual demands, and the reserve that we had to keep in the banks, which they wished.

By the Court: Q. That is to say that you had to draw upon the fifteen per cent? A. No, sir; the reserve, some of the banks would require heavier credits on account of the outstanding checks, out of town checks, and of course we had to keep over and above the reserve, so far as the actual reserve was required.

Q. You did not mean in any instance when you said the cash was short that it was below the legal reserve? A. No, I didn't mean below the legal reserve at all; in fact I was very specific with Mr. Smith at all times to ask him how it stood.

Q. Now just one other matter. I asked you yesterday whether the fact was not that Mr. Smith before this Nones matter had been discovered by the Banking Examiner had voluntarily confessed the matter to Mr. Appleton. Have you had occasion to give further thought to that matter?

Mr. Hinds: I object to that on the ground that is obviously not within this witness's knowledge; if he answers at all it must be hearsay evidence.

The Court: The witness can only testify as to facts within his own knowledge. The same rule, as I understand it, obtains on cross-examination that obtains on direct-examination, the examination in either case must be as to facts.

Q. In order to refresh your recollection I would like to call your attention to the letter of the Commissioner of Banking and Insurance of March 14, 1909. A. You mean May.

Q. May 14, 1909, yes, the third paragraph on page 69. "The examination was made on Friday, March 12th, but no word was dropped by Treasurer Smith of this shortage at that time, although he evidently realized that it must come out in the course of the examination. On Sunday, March 14th, Mr. Smith called the Examiner up at his home by telephone, and made arrangements to see the latter the following Tuesday evening, March 16th, when he confessed the whole matter to the Examiner and stated that he had made a similar confession to yourself and Mr. Munroe, a director and attorney of the bank, on the Saturday following the examination." Do you recall whether Mr. Smith and Mr. Appleton did or did not state to you and to me that Mr. Smith had voluntarily confessed this matter before it had been discovered by the Bank Examiner? A. I think Mr. Smith told me he had told Mr. Appleton, but that was after Mr. Appleton had told me, and I think at my house, at my residence.

Q. Do you or not recall that Mr. Appleton stated that Mr. Smith had come and confessed it? A. I do not recall that fact.

CROSS-EXAMINATION by Mr. McGeehan:

Q. Mr. Odell, do you remember exactly when it was and from whom you received your first knowledge or intimation of the irregularity of Mr. Smith's transactions on the Nones note? A. Yes, sir.

Q. When was it, exactly? A. When?

Q. When was it, and from whom did you receive such knowledge? A. I received it from Examiner Appleton of the Banking Department when he called at my house.

Q. At what time was that? A. I can't tell you just exactly what date it was, it was the time he was making that examination there.

Q. It was in the month of March, was it not? A. 1909, I think it was, yes.

Q. In the month of March? A. Yes.

Q. At what time in the month of March did your board of directors hold its regular meeting for that month? A. I think our regular meeting was the third Tuesday in the month or the last Tuesday in the month.

Q. That was subsequent to the date of the delivery of information by the Bank Examiner to you of the irregularity upon the Nones transaction, was it not, it was later? A. It was later, yes, after he had spoken to me about it.

Q. And did you hold a meeting of the board of directors in the month of April following the date of your receipt of that information? A. Yes, sir, each month, a full board meeting was held each month.

Q. And another meeting also in the month of May? A. Yes.

Q. Why was it that this matter was not

brought to the attention of the board of directors at those regular meetings following that information? A. You mean the Nones matter?

Q. Yes. A. I think it was brought to their attention.

Q. Do you mean to say that the board of directors had knowledge of the transaction and of the criticism of the Department of Banking and Insurance? A. Not of the criticism, because I had no criticism at all from the Banking Department until June.

Q. Except the informal criticism? A. Except just what Appleton told me; that is all he told me, about the Nones matter, nothing about any other matter.

Q. Had you reported to any of the directors that Appleton had spoken to you about this transaction, before the June meeting? A. Yes, sir, many times.

Q. To whom did you report that? A. No doubt it was spoken to mostly all of them.

Q. Individually and not as a report? A. Individually and as a full board, both.

Q. Are there any minutes, to your knowledge, regarding that? A. No, I think that is just informal, I don't think it was brought up in the meeting, just informal discussion; you see the matter was settled all up within a few days afterwards and there was no discussion to be made because the bank wasn't out anything and everything had been paid up on that Nones matter, and the discussion was only that the thing had happened, that that is the way he had kept the books, but it had been all made good.

Q. You testified in your direct-examination

yesterday that prior to the holding of the meeting on June 21st when the letter was brought before the board, that the letter was held and read by several individual members of the board of directors; is that so? A. Yes.

Q. You also said that there had been an informal discussion of the letter prior to the meeting? A. You mean at the night of the meeting, which is held in the evening?

Q. On the day or afternoon of the meeting; is that true? A. Why I don't know as there was any discussion before the meeting; there might have been some discussion of it there, no doubt.

Q. Is it not true that when the meeting convened on the twenty-first of June you brought up the matter of the Nones transaction by giving what purported to be a general summary of the letter that you had received from the Department of Banking and Insurance, and did not read verbatim the contents of the letter? A. The letter was read itself; every Banking Department letter that came in that institution was read to the full board.

Q. Did you not state to the board of directors that were assembled there that the letter that you had received from the department of Banking and Insurance referred only to the Nones transaction? A. I did not.

Q. And is it not true that in that discussion that preceded the taking of the vote upon it that it was the unanimous opinion of the board assembled there that the resignation that was tendered should be accepted, until you referred to a statement made by Appleton to you at the time he submitted his report to you? A. Not

to my knowledge I don't know there was any such understanding.

Q. Did you not state to the board of directors after that particular letter was presented to them that at the time Appleton met you at your home he had suggested to you that in the event that the position of Smith was to be vacated that he would be a candidate or would like to be considered a candidate for that position? A. No, sir.

Q. Did you not state that to the board of directors? A. No, sir.

Q. Did you not mention to the board of directors— A. No, sir, didn't know anything about it.

Q. —such a desire on the part of Appleton? A. No, sir.

Q. You are sure of that? A. Mr. Appleton never said anything to me about it.

Q. How many votes were taken upon the question of the acceptance of the resignation of Smith? A. I think there were three votes, if I remember rightly; of course this is a great deal from my recollection, as near as I can remember; it is a long time ago.

Q. Don't you remember that prior to the taking of the vote upon the question there was a discussion of it, and that that time the members of the board of directors determined to accept the resolution but not by formal ballot, or to accept the resignation? A. I can't recall any; there was no board meeting.

Q. Until you presented to them your statement as to Appleton's attitude? A. No, not to my knowledge there wasn't any such.

Q. You said that the resolution in question was presented by director Scarlett? A. No, I didn't say so.

Q. That the resolution whereby the resignation was not accepted was offered by Mr. Scarlett and seconded by Mr. Banister? A. I didn't say so.

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

Q. Do you remember that that was the case? A. Only by referring to the minutes.

Q. Do you remember the circumstances surrounding the making of the motion? A. No, sir, I don't remember.

Q. Do you recollect that at the time of the making of the motion to retain secretary Smith that the suggestion was made by yourself that some member should make a motion to that effect? A. No, sir, never made any such suggestion.

Q. You don't remember? A. I don't remember ever making any such suggestion.

Q. Do you know, Mr. Odell, whether any communication was received other than a written communication from the State Department of Banking and Insurance prior to May 14th, in regard to the examination that had been made two months previous by Appleton? A. I would like you to ask that again.

Q. (Question read.) A. Not to my knowledge, I never received any.

Q. Do you know, Mr. Odel, whether the matter of the Nones transaction, as referred to by Appleton, was brought before the meetings held weekly by the executive committee of the bank? A. I don't know whether it was brought directly

before the meeting itself, but it had been discussed I think with the executive board.

Q. You think it had, you are not sure? A. Not sure, no, sir.

Q. You don't think it was discussed before a regular meeting? A. I don't think it was, I don't believe it went into the minutes if it was; might have been an informal discussion.

Q. In your testimony yesterday you said that there was no daily check or supervision upon secretary treasurer Smith in his keeping of the general ledger except the examining committee of the directors and the representatives of the State Banking Department. Did you, before understaking your duties as president of the Roseville Trust Company familiarize yourself with the by-laws of the company? A. I had read the by-laws over, yes.

Q. Do you remember familiarizing yourself with the provision under "The duties of the president," that he shall have the general supervision and direction of all of the other officers of the company and shall see that their duties are properly performed? A. I suppose so.

Q. You were acquainted with that? A. I suppose so.

Q. Do you desire to modify your statement of yesterday to that extent then, that there was the check of your own supervision of the inferior officers of the bank, in addition to the examining committee? A. No, I do not wish to modify my answer of the day before. I checked up—you are only reading the by-laws now.

Q. Yes. A. I just testified yesterday what I actually did.

Q. Well, did you exercise a supervision over the accounts? A. What time I had I did.

Q. The accounts of Raymond E. Smith? A. More or less.

Q. You did. Then there was that check in addition to the examining committee, wasn't there? A. I don't know just how to answer that question. "There was that check." There was that check if I exercised it.

The Court: The question will be of little value unless you ask him how he exercised it. There are two things. First, the by-laws. Now you are inquiring about the practice under the by-laws.

Q. What did you do to comply with the provision of the by-laws that required you to exercise supervision over the officers of the bank and their accounts? A. I went there each morning and questioned Mr. Smith, and sometimes spoke to the tellers about how matters were going, what transactions had been done the day before, and questioned Mr. Smith about the cash reserve, and such different things, and if there had been any loans paid off or loans given. Even when I was there Monday night I would more or less look some of the books over, but not check them up by daily balances, or anything like that, just go through them casually, and the rest of the matter was left to Mr. Smith as an officer and director to supervise the general work of the office.

Q. Did you report from time to time to the board of directors or the executive committee the fact that you made regularly such examinations? A. They weren't examinations, they were just general supervision, that is all.

Q. The supervision, you reported that to the board regularly? A. No, sir, I did not, it wasn't necessary, because all those transactions were brought up at every board meeting by printed or typewritten statement from Mr. Smith, and then they could ask their questions at that time, and the books were accessible to them, if they wanted, at the meeting.

Q. Did the yask questions of you to explain various transactions, or question you regarding your supervision over Mr. Smith? A. They did not, no.

Q. Did they know you did supervise the accounts of Mr. Smith? A. I don't know what they knew.

Q. You actually did supervise to a certain extent?

The Court: Well, he has told you what he did. It does not add anything to characterize the kind of supervision; he has told what the supervision was, now if you wish to find out whether there was any more supervision why that you can do of course.

Q. Did you exercise this supervision that you have described in conjunction with the examining committee of the bank, or did you do it separately from their examinations? A. Only just individually, myself, alone.

Q. Individually? A. Yes, without any committee meetings or anything else.

Q. Did you ever accompany the examining committee in their examinations and co-operate with them? A. I did not.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. Mr. Odell, on cross-examination you said something to the effect that the minute book had been tampered with or was not to be relied upon by you, that it came to your knowledge, as I recall, that Mr. Smith had made some changes in it, what did you refer to? A. I didn't say he made any changes in it. I referred to the fact that I knowing the kind of a man Mr. Smith was, and what he had done in the bank generally, under testimony he had given at previous other trials under oath, that I could not virtually stand for anything hardly in the way of the books a man that committed forgery right straight through, he could swear to anything or put anything in the books he wanted to.

Q. Then that was simply your inference and not a matter of your knowledge? A. Not a matter of my knowledge, it was a matter of my knowledge by hearing it sworn to on previous trials in my own indictment he swore to things he had done.

Q. I am asking you about any possible tampering with the minute book in that matter it is simply a matter of inference?

The Court: Who kept the minute book?

Mr. Clark: Mr. Smith, the treasurer, did.

A. He was the secretary and treasurer.

The Court: He wrote out the minutes, did he?

Mr. Hinds: Yes. The witness on cross-examination I think said he knew the minute book had been tampered with.

A. No, I said I couldn't put any dependence in the minute book, knowing the man who had kept the minute book.

Q. Is not the same true as to your remark on cross-examination about the general ledger; it is simply from your present knowledge of his character that you infer that the general ledger is not reliable; is that so? A. I should say not only the general ledger but more or less a good many of the books.

Q. You have no first hand knowledge of it? A. No.

Q. You on cross-examination referred to the fact that a typewritten report was available to the executive committee and to the board of directors at each meeting, the report which you said was prepared by Mr. Smith showing the condition of the bank, its assets and liabilities; is it a fact that report was given to each director, a copy of it, to take home? A. Each member of the executive board each week had a copy of the assets and liabilities of the bank specified differently, loans, etc., demand loans, collateral loans, and a list of the notes was given to each one of them to look over, that was laid right in front of them, they had it to refer to at the meeting; those were kept until the full board meeting and then they were given to the full board or accessible by them so that they could refer to each week's work.

Q. Who made up these reports? A. Mr. Smith.

Q. I show you a number of flimsy sheets on thin paper, and ask whether those are the reports, are some of the reports? A. I should say that they were; those are reports of the actual financial condition; not reports of the notes, loans, etc.

Mr. Hinds: May this bunch be marked now for identification, because I do not desire to go into the details at this point.

Mr. Cornish: As what?

Mr. Hinds: Marked for identification as being the bundle that he has just referred to. I am not characterizing it.

The Court: Why do you ask to have it marked for identification?

Mr. Hinds: So that later when I examine some witness on it it may appear that this is the bundle which Mr. Odell has identified as having been such reports.

Mr. Fairlie: I do not understand that Mr. Odell can identify those sheets as true copies of the reports.

The Court: Mr. Odell's testimony is that these papers look like reports that were handed to members of the board at their meetings. That does not prove anything. It is not worth while to have it marked until it is shown to be a document capable of being used in this case.

Mr. Hinds: I simply want to identify it as having been the one referred to.

The Court: Well, he does not identify it; he says that there were reports; he does not say those were the reports.

Q. Now Mr. Odell, did any of the reports contain anything more than the mere naked statement of the assets and liabilities in summarized figures?

Mr. Whiting: I object to that; the reports will speak for themselves.

The Court: If the reports can be pro-

duced they will speak for themselves. I presume you will be able to produce them.

Mr. Hinds: Yes, your Honor.

The Court: You can recall him then, if you desire, for the purpose of showing that there were other reports that could not be found similar in character to the reports which you are able to prove by other evidence.

Q. Mr. Odell, have you preserved your own copies of these reports? A. No, sir.

The Court: What became of them?

Q. What became of these reports, your own copies? A. I think they were destroyed after my indictment trial.

Q. Did I understand you to say you were not able to identify the bundle that I showed you as being those reports, other than that they look like it? A. They looked like it, that was the style of report we received, that is all.

Q. Is it a fact that the reports that actually existed did have the resources, instead of being characterized by names, labeled by the letters A, B, C, D, E and so on; was that true of the reports as it is true of these?

Mr. Whiting: I object to that, your Honor.

The Court: Oh, yes, you can ask questions that are useful for the purpose of identification.

Q. Is that a fact? (Question read.) A. That was the custom, I believe.

Q. Now at the meeting following the receipt of the Commissioner's letter, which took place on June 21, 1909, was anything said by the defendant

Scarlett or by any other director by way of comment or criticism that the matter had not received formal attention by the board earlier, the Nones incident having occurred in March? A. I can't recollect that there was, may have been, I don't remember it.

Q. What is your recollection; that they were not? A. I should say off-hand—

Mr. Whiting: I object to this leading of the witness.

The Court: Proceed.

A. I should say off-hand that it had been talked over before the board meeting.

Q. Now on cross-examination you were asked what you had in mind when you first voted against the reinstatement or retention of Mr. Smith, and you said you had in mind that time the facts that were stated in the letter of Commissioner Lewis of May 14, 1909. I ask you whether you did not also have in mind that time the strong expression of advice contained in the Commissioner of Banking letter to the effect that "No confidence can be placed by this Department in any official who would be guilty of this sort of thing, nor does he seem worthy of the confidence of the directors of the institution. He should be required to resign and cease his connection with the Company." Was that also in your mind? A. I cannot say that it was; the general letter was in my mind of course.

Q. Was that strong expression of the Commissioner a matter of discussion at that meeting? A. I cannot remember that it was.

Q. Did you specifically comment upon it to the other directors? A. I cannot say that I did; the

letter spoke for itself; I don't remember commenting at all upon the letter itself.

Q. On having your recollection refreshed by Mr. Keim's counsel I believe you said that Doctor Keim was not present at that meeting. It is a fact, is it not, that the signature purporting to be Doctor Keim's on the statement which is printed at page 87 of the bill, where it says "The undersigned subscribe their signatures as part and parcel of the aforesaid sheets" is Doctor Keim's? A. I took it for granted it was his, yes. I want to say here, that as I remember it the signatures to that letter that you just referred to were secured by Mr. Smith himself.

Q. That is, he procured the signature of each and every director? A. Yes, had them sign; I am speaking only off-hand it was his signature; it might have been a forgery for all I know.

Q. Do you know Doctor Keim's signature? A. No, sir.

Q. The procuring of those unanimous signatures to an acknowledgment by the directors that they had read the letter was at the specific request of the Commissioner, was it not? A. I believe so.

Q. As contained in his letter. Now you said on cross-examination that each and every letter from the Department to the bank was read to the full board. Is it a fact that also each and every letter which you wrote in behalf of the Trust Company to the Department was read to the full board? A. I doubt if that was read to the full board, the letters I wrote.

Q. Were those letters read to anybody? A. Mr. Smith read them, and more or less Mr. Fairlie would go over them too.

Q. Did the executive committee have them or read them? A. I don't think that they did.

Q. Did the Trust Company keep a letter book? A. Supposed to have kept one.

Q. Well, were those letters copied in the letter book? A. Supposed to be copied in the letter book.

Q. So far as you know they were? A. As far as I know they ought to have been copied in the letter book.

Q. Were your replies to the Department's letters the subject of discussion at any time by or between any of the directors or members of the executive committee before you wrote them? A. Yes, sir.

Q. Now I call your attention to the letter which is in evidence and which is printed at page 88 of the bill of complaint, and ask you whether that letter was the subject of any discussion. July 16, 1909. Read the letter, please? A. "July 16, 1909.

"William P. Odell, Esq., President,
The Roseville Trust Company,
Newark, N. J.

Dear Sir: I am in receipt of a letter, dated 21st ultimo and signed by Mr. E. K. Sexton, Secretary *pro tem* of the special meeting of the Board of Directors of your Company, held on the last mentioned date, embodying the action of the Board upon the resignation of Mr. Raymond E. Smith, Secretary and Treasurer of the institution, which will have my consideration. I will say now, however, that I emphatically disapprove of the decision of the Board in the matter.

Yours truly,

VIVIAN M. LEWIS,
Commissioner."

Q. Was that letter a subject of subsequent discussion by the board of directors? A. I think it was read to the executive board and also to the full board, if I remember rightly.

Q. What comment, if any, was made? A. I cannot remember whatever comment there was made upon it.

Q. Will you turn to the minutes of February 11, 1913, the portion which refers to the examining committee having made its report as of the 14th day of December, 1912, and read what you find in that respect? A. This is the minutes of the board of directors meeting, February 11, 1913. Examining Committee's report was read and ordered spread upon the minutes. Motion was made by Mr. Fairlie, seconded by Mr. Munroe, that the Examining Committee's report be taken up by the Executive Committee, and that they report back on the various items touched upon by the Examining Committee at a later meeting of the board of directors.

Q. And so far as you know that correctly describes the action of the directors, doesn't it? A. As near as I could judge.

Q. Was there any discussion upon that motion? A. By the full board? Discussion?

Q. Discussion by way any of the members? A. I don't remember any discussion; I do not remember the facts specially; I do not remember the meeting specially at all.

Q. Did the Executive Committee act as instructed in respect to the report of the Examining Committee? A. Yes, sir.

Q. What action did it take? A. I cannot recall what action, I don't know what the action was it was asked to take.

Q. You have absolutely no recollection as to what there was about the Examining Committee's report of December 14, 1912 that occasioned that resolution? A. No, sir.

Q. Refresh your recollection by looking at the report itself and see if that will enable you to tell us? A. Do you want me to read.

Q. I want you to refresh your recollection by looking at it and see if you can now tell me what it was about that report which occasioned that resolution? A. Why the Committee recommended that we proceed to call all over due paper as soon as we could, and that the International Tobacco Company's loan should be discussed, and that the specific things about the mortgages should be corrected.

Q. Does that refresh your recollection so that you can now tell me were those the matters that prompted the resolution or was the occasion for the resolution? A. I imagine it was.

Q. You have no recollection other than that? A. No specific recollection, no.

Q. Did the the Executive Committee at the next meeting, or at any other meeting, ever report back to the directors upon that matter; refresh your recollection from the minutes if necessary? A. I cannot recollect that they were.

Q. On cross-examination you said that after the Nones incident had disclosed the practice of Mr. Smith in drawing drafts upon the depository accounts and not making any entry upon the stubs, that you emphatically told him not to have that occur again. You said that, did you not, on your cross-examination? Certainly my very positive recollection is that you did. A. I remember

speaking to him that the stubs should be filled in and that the checks should be pasted against the stubs when they were returned from the bank.

Q. Did you see thereafter that he did that? A. In every instance? No, sir.

Q. In any instance? A. Why at different times I would look the check books over and see that they were pasted in.

Q. Did you ever find any blank stubs? A. I can't say that I did after that.

Q. As far as you know did anybody else connected with the bank look at check stubs to see if any of them were missing, any were blank?

Mr. Stiefel: Did anybody else?

Q. As far as you know.

The Court: In your presence.

A. No, not in my presence.

Q. Now you said that so far as you know the only director that received any compensation was Mr. Foster? A. One dollar a day.

Q. Is it not a fact that his compensation was $75 a month? A. I couldn't say what it was, I know he got some little recompense for it.

Q. Look at the minutes; do you find that to be the fact? A. I find it so on the minutes.

Q. Now Mr. Odell, on cross-examination you said that you were very specific to ask Mr. Smith frequently about whether the cash was below the legal limit of three per cent of the demand liabilities; did you ever find that it was? A. No, sir.

Q. Did you ever look at the books yourself to test the accuracy of Mr. Smith's statement? A. I have at different times.

Q. You never found that the cash was below

the legal limit? A. Not according to the statements that I looked at.

Q. When you looked at the books for that purpose how did you understand that the percentage was to be arrived at, what was your operation in testing that fact? A. If I remember rightly it was fifteen per cent of the deposits I think, I don't remember just exactly, I did at that time.

Q. Don't know whether it was fifteen per cent or three per cent? A. No; that was some time ago; I know I made up the percentage according to the general report that I had from the Banking Department, a book, a printed book which they have.

Q. Have you that with you now? A. No, I have not; I don't remember what the book was called; it was one of the general books.

Q. Was it your understanding that there should be in the bank fifteen per cent in cash of the total deposits of the Trust Company? A. On deposit in the reserve banks.

Q. Did you have any understanding or make any inquiry with respect to the amount of cash it had as distinguished from—currency it had as distinguished from sums on deposit? A. No, sir, I did not.

Q. Did you ever ask Mr. Smith to see that the cash was kept up to the legal minimum as distinguished from the available funds in other banks? A. I didn't know there was any distinction made between the two.

Q. Did you ever hear any director ever say there was any distinction? A. No, sir, not to my recollection.

Q. So far as you know it was never the sub-

ject of discussion or comment or inquiry in the board of directors or executive committee, in the whole history of the institution, that there should be any actual currency as distinguished from available funds in the bank up to a certain legal minimum; is that a fact? A. I cannot say I ever heard any discussion; I don't know as it was ever brought up.

Q. Did the examining committee at any time that it made a report make any finding whatsoever respecting a condition where either the available funds or the cash was below the legal minimum?

Mr. Munroe: I object; the reports are in writing and are in evidence.

Q. Other than what is shown in the minutes. A. If they did, why it would show in the minutes.

RE-CROSS-EXAMINATION by Mr. German:

Q. In your re-direct-examination, Mr. Odell, you said that the letter of July 16, on page 88 of the bill, was read to the board? A. What date was that?

Q. July 16, 1909, there was a letter from the Commissioner to you? A. About the Nones matter.

Q. Page 88 of the printed bill. A. Yes, sir, yes, I see.

Q. (Question read.) A. Full board, yes, sir, I said that.

Q. Would it appear by the minutes if it were so read? A. I doubt if it would, I am not sure whether it would or not.

Q. Do you remember particularly that it was? A. It was my habit to read all communications

that had any reference, outside of just acknowledging the specific letter it was my habit always to read it to the board.

Q. Outside of the habit, do you remember specifically that you did? A. I don't remember any of these things specifically because it is too far away, it is eight years ago.

Q. When you say the full board you mean such members of the board as were at that meeting? A. Yes.

Q. You cannot state specifically at what meeting this letter, if it was read, was read? A. No, sir.

RE-CROSS-EXAMINATION by Mr. Whiting:

Q. Will you kindly turn to the minutes of the executive committee meeting on November 13. 1912, page 408, and read the minute there with respect to the approval of a loan of $55,000 to Mr. Smith, treasurer? A. "Motion was made by Mr. Foster, seconded by Mr. Banister, that the authorization for loan of $55,000 borrowed by the treasurer on August 22d, and which authorization was inadvertently left out of the minutes of the meeting of August 22d, be sanctioned."

Q. Were you present at that meeting? A. What do you mean, August 22d?

Q. No, at the meeting where that resolution was passed? A. When that resolution was passed, yes, sir, I was present.

RE-CROSS-EXAMINATION by Mr. Fairlie:

Q. What was that fifty-five thousand dollar loan a loan to, to Mr. Smith personally? A. No, sir, I think it was a loan secured from the, if I

am not much mistaken from the Irving National Bank on collateral.

Q. Secured by Mr. Smith for the use of the Roseville Trust Company? A. For the use of the Roseville Trust Company, yes.

RE-CROSS-EXAMINATION by Mr. Whiting:

Q. What is the explanation, Mr. Odell, as to the minutes in their present form, they do not seem to set forth that detail, the minutes merely refer to a loan, as I understand it, to Mr. Smith the treasurer; was there any reason for leaving out the explanation? A. I don't know what the minutes read there, I don't recollect what they were.

Mr. Clark: I can clear that up for you if you want the information. It was simply in response to a letter from the Department calling their attention to the fact that the bank had borrowed $55,000 from the Irving National Bank, and that no authority was shown in their minutes for that act; thereupon the Trust Company apparently authorized the preceding borrowing, but did it in this informal manner.

Q. And that was a matter which was in the hands of the executive committee, was it not, Mr. Odell? A. The borrowing of the money?

Q. Yes. A. Yes, sir, but I don't think I was present at the meeting when they borrowed the money or when they authorized the borrowing of the money.

Q. This was not a matter that the full board passed upon in any way, was it? A. Only so far as they ratified it at their full board meeting;

they ratified all the executive board transactions at the full board meeting; minutes were read and ratified; each executive board minutes each week were read to the full board and ratified by them as a usual thing, by the full board.

WILLIAM T. BENJAMIN, sworn:

Direct-examination by Mr. Hinds:

Q. What examining committees were you on, Mr. Benjamin? A. Committee known as the Examining Committee of the bank.

Q. During what periods? A. During the life of the bank, with the exception of one year.

Q. And what year was that? A. I think it was 1911.

Q. Were your duties prescribed for you by any resolution of the Executive Committee or directors or by any instructions? A. No, sir.

Q. What were your duties, what were the duties of the Examining Committee, as you understood them? A. Why to examine the cash and securities and general accounts of the bank.

Q. And having examined them what was there further to do, if anything? A. Report to the Board of directors.

Q. Didn't you compare them with anything, or just wanted to see that there were some there; did you add them up, or find out some amounts?

Q. Mr. Benjamin, what were the sources of information as to your duties? A. From the chairman of the Examining Committee.

Q. And as far as you personally were concerned

his word was your only authority as to what your duties were, what he told you they were; is that correct? A. Yes.

Q. Then you didn't know yourself that there were duties of examining committees prescribed in the bylaws? A. Only in a general way.

Q. Had you read the bylaws prior to making your examinations? A. I don't remember that I did.

Q. Had you heard from the chairman what the duties were as contained in the bylaws? A. No.

Q. Had you heard from the chairman that the bylaws required the examining committee to do not only what is specifically stated therein but also to perform such other duties as are mentioned in section 14 of the Act concerning Trust Companies? A. That question was not taken up.

Q. This is the first time you ever heard of that act, is it not? A. Yes.

Q. Now was there any discussion by and between the members of any examining committee of which you were a member as to just what your duties were as a committee? A. No.

Q. What did the committee do, for example, in performing the examination as of December 14, 1912? A. Well, only in a general way I can tell you what they did.

Q. Tell us as well as you can? A. They went over the securities, counted the cash.

By the Court: Q. That is rather ambiguous; you say you went over the securities; tell us what you did? A. Personally?

By the Court: Q. In the first place, to what securities do you refer? A. The notes and collateral.

By the Court: Q. Well now, you say you went over them; what do you mean by that? A. We examined them.

By the Court: Q. You might merely have taken them in your hands and looked at them, or you might have made extracts from them, or you might have done various other things in relation to them; what counsel wants is what you actually did when you say you went over the securities? A. We took the collateral and examined it and compared it with the printed list that we had of the securities, and examined it in that way.

Q. Where were the securities at the time you made the December, 1912 examination, the securities which you have just referred to?

The Court: Where did you find them? A. They were brought into the room by the secretary.

Q. By Mr. Smith? A. Yes, sir.

Q. Did he say where he had gotten them from? A. No.

Q. Now what exactly do you mean by securities? Do you mean the securities which borrowers had taken into the bank as collateral for loans by them, or do you mean stocks and bonds in which the Trust Company had invested? A. No, I mean the collateral that was brought there by the borrowers.

Q. Now each one of those items of collateral accompanied its appropriate bill or note, did it not? A. Yes.

Q. Did you look at the amount of each note, each collateral note? A. Yes.

Q. Did you compare that with this list that Mr. Smith gave you? A. Yes.

Q. Did you inquire whether Mr. Smith had giv-

en you all the securities, that is, the collaterals and notes that you are referring to? A. No.

Q. Did you make any effort at all to test whether or not the list which he handed you was a correct list? A. Personally not, no.

Q. Did you examine the list, did you compare the list with the aggregate of collateral loans, as shown on the general ledger? A. Yes.

Q. What did you find? A. Found that the result was the same on the ledger as it was on the list.

Q. And this was on the fourteenth day of December, 1912, was it not? A. I cannot answer that, I don't remember.

Q. By looking at your report can you tell me. I show you the report as of December 14, 1912. I just want to have you refresh your recollection so that you can tell me about the date when you made the examination? A. Possibly that is so, I am not sure.

Q. You signed the report, did you not? A. I did.

Q. You would not have signed it if the date had not been correctly stated in it, would you? A. Probably not.

Q. Well, you would not, would you? Are you quite sure, no doubt at all in your mind that you did compare the total of those collateral notes which you had in your hand with the total as shown in the general ledger? A. Yes.

Q. You personally looked at the general ledger? A. I think I did.

Q. Did you personally add up the list of notes as shown in Mr. Smith's list? A. I did not.

Q. Did you personally add up the amounts of

the notes which you actually had in your hand, collateral notes? A. No.

Q. Then for all you personally knew there might be one hundred thousand dollars less aggregate of collateral loans there in your hands than was called for on Mr. Smith's list; is that a fact, as far as you personally knew to the contrary? A. Yes.

Q. What did you do with that statement that Mr. Smith prepared for you? A. It was left in the hands of Mr. Sexton.

Q. Is it in existence today, as far as you know? A. I don't know.

Q. Did that statement contain the aggregates of each of the general groups of assets and liabilities of the bank, or did it also contain in detail as to each of those groups, for example, and collateral notes, did it list each and every collateral loan or did it simply give an aggregate of collateral loans? A. Simply gave the aggregate of collateral loans.

Q. How do you know, or did you know at all that the aggregate of the collateral notes which you examined in your hand was the aggregate shown on Mr. Smith's list, if you did not add it up? A. I didn't know.

Q. Did you hear any of the committee say that they had added it up? A. No.

Q. Did you ask any of them whether they added it up to see whether the aggregate was what was given on Mr. Smith's list? A. I did not.

Q. So far as you know did any of the Examining Committee, besides yourself, look into the general ledger to see whether the aggregate as shown on the list was the same as the aggregate of the actual collateral loans which you had in your hands, or notes? A. Mr. Sexton did.

Q. How do you know that he did? A. We were together.

Q. Did anyone else look into the book? A. Not in connection with the collateral loans.

Q. Do you recall what kind of a looking book it was, this general ledger, in which you found the total of the collateral loans?

The Court: You have it in evidence, have you not?

Mr. Hinds: I wanted to test this witness.

The Court: No; it was here yesterday.

Q. I show you the general ledger and ask you to find there at the place which I have opened the date December—you did find it, the date, December 14th 1912? A. It was shown to us at the time.

Q. You saw it? A. Yes.

Q. Well, do you see it there now?

Mr. Cornish: See what?

Q. The column for December 14th. A. This isn't the book that I saw.

Q. This is not the general ledger in which you found the aggregate of collateral loans? A. No, sir.

Q. You observe that there is a line for collateral loans in the book which you are now looking at, which is Exhibit C-6, do you not? A. Yes.

Q. What is there about this book which makes you say it is not the book that you examined at that time? A. The book that we examined at that time there was a larger book than this.

Q. Was it thicker? A. Yes.

Q. Was it as long as this book? A. I doubt it.

The Court: As wide, you mean.

A. As wide.

Q. Was it as high as this book, from the bottom

of the page to the top of the page? A. It was longer than that book.

By the Court: Q. You mean it was higher? A. It was longer and higher, and not as wide, if I remember right.

Q. Was it a book more like this? (showing witness book) A. Yes, on that order.

Q. Well now, just look at that.

The Court: What is the exhibit number?

Q. This has not been identified yet, your Honor. I now show you a book which on its cover says, "Individual Ledger Transfer No 2." Will you look at that book and tell me whether that is the book that you examined on that day when you say you found the total of collateral loans and compared it with the total as shown on Mr. Smith's list? A. I don't think it is.

Q. Well, was it a book somewhat similar to that in appearance and size? A. Yes.

Q. I show you a book labeled "Collateral Loan Book N. 6," Exhibit No. C-53 for identification, and ask you whether that is the book that you have in mind? A. I cannot say, I don't know; no, it is not.

Q. I show you the only other general ledger of the bank, and ask you whether that is the book that you refer to?

Mr. Cornish: What is it?

Mr. Hinds: It is another general ledger, the only other one.

The Court: How is it marked?

Mr. Hinds: It says C-62 for identification.

Mr. Stiefel: I object to the characterization of that book as the only other one, that is simply counsel's characterization and it is not fair.

Mr. Hinds: I think Mr. Odell has so stated, but I will withdraw the characterization.

Mr. Stiefel: Mr. Odell's statement does not make it so.

Q. I show you that other general ledger and ask you whether that is it? A. I don't know.

Q. Was it thicker than that? A. My recollection is yes.

Q. Then to the best of your recollection that was not the book; is that right? A. Yes.

Q. Look in that book and see did you find any date for December 14, 1912? A. I don't see the dates on here.

The Court: Well, there (indicating) is December 2d, now turn to December 14th.

Q. What is the last date in that book? A. 1911.

Q. Does that enable you to say whether or not that is the book you had in mind? A. That is not the book.

Q. Now when you looked at the aggregate of collateral loans as shown in this book you had no means of knowing whether that was a correct total of the collateral loans of the institution, except that it corresponded with the figure as shown on Mr. Smith's list; that is the only comparison you made, is it not? A. That is all.

Mr. Cornish: I object on the ground that the question is leading; it is his witness and he is trying to break him down; it is cross-examination more than direct-examination.

The Court: I think the question is proper; I do not see how the question could be differently put.

Q. (Question read.)

The Court: I see nothing objectionable about that.

Mr. Stiefel: I have been trying to follow this, and I may not have it clear. The witness state the collateral loans were examined, were checked up from a list; that they also had an opportunity to examine the book and see the aggregate, and the aggregate was also stated on a statement. Now, the question itself, on its face, after those statements made by the witness, involves a mis-statement because they had the actual collateral notes to show and prove the truth of that, they had that means, the very best means to show it, and it is unfair to put into this record in the form of a question a suggestion which is negatived by the facts proved in this case. It is largely a matter of argument, but these questions go down and impressions are formed. I think I should make objection. After they have shown that the examination disclosed the physical facts were checked up with the statement, it is unfair to say, well, the only means you had is this, that and the other thing, when it has been shown in this case here that they did the very best thing to demonstrate the truth of it in the best means possible.

Mr. Clark: There is a serious error in Mr. Stiefel's statement, an error of reason and not of fact.

The Court: You need not discuss the matter, the question has been put and answered and I see nothing objectionable about it.

Q. Mr. Benjamin, neither you or any other member of the committee added up the collateral loans or notes, as they were there before you, to compare that total with the total given on Mr. Smith's list, did you?

The Court: I will overrule that because it is repetition. It is perfectly apparent that if any official desired to deceive a committee he could hand that committee a list of figures which was added up, but erroneously added up. Now as I understand the question was directed to that. Mr. Smith would hand a list of collaterals and he would apparently add them up, and the addition may have been wrong.

Mr. Hinds: That is not the testimony.

The Court: Well, I say that might have been.

Mr. Hinds: What he said was that the list did not contain the details of the separate collateral notes, it was simply a list of the groups of assets and liabilities of the entire bank, and the only figures for collateral loans was the total of it.

The Court: I did not so understand the testimony.

Q. I will ask the witness again; that was certainly my understanding. Did this list show the separate collateral loans, or did it show only the one aggregate of collateral loans? A. It showed a separate item for each loan.

The Court: That is the way I understood it.

Mr. Hinds: I beg your Honor's pardon.

The Court: Now I say there might have

been a mistake occasioned in that way; that is a way in which frauds are sometimes committed; I have had occasion to see that kind of a fraud myself; the ledger contains the items; the items are correct, but the addition of the items is not correct, sometimes through mistake, but sometimes because of a fraudulent purpose. Now I supposed your questions were directed to that view of the matter and that is the reason that I overruled Mr. Stiefel's objection.

Q. Now Mr. Benjamin, at any time when you were a member of an examining committee did you verify any additions either in books or any list given to you by Mr. Smith? A. Personally, no.

Q. As far as you personally were concerned you relied entirely on the additions that were shown either in the books or on the list, as the case might be; is that right? A. Yes, sir.

Mr. Stiefel: I object to that. There were other members of this examining committee and the witness has testified they looked at the books, and it is necessarily true that he must have relied on that.

The Court: He is asking about himself; I presume he will call the other members of the committee and ask them.

Mr. Stiefel: What I object to is this continual argument by counsel for the complainant who calls this man as a witness, and in the form of an argument he puts that question; of course the witness will say yes to that; he does not realize that as a matter of fact he has always testified that

Mr. Sexton made certain examinations, and naturally he relied on that too.

Q. Did you see any other members of the committee on the occasion of the December 14, 1912 examination make any additions? A. I did not.

Q. Their examination was performed in your presence, was it not? A. Yes.

Q. Now we will turn for a minute to another item of the bank's assets, "Cash;" what did the committee do on December 14, 1912, respecting the cash of the institution? A. Some member of the committee counted the cash.

Q. Did you see him count it? A. No.

Q. Having counted it what did he do, if you know?

The Court: Well, what this witness did or what he saw others do? There is no proof that they counted it except the statement that they counted it in his absence. Let us get from each member of the committee what he actually did himself, or what he saw others do.

Q. Did you make any inquiry or hear any statements from other members of the committee as to what they did respecting the cash?

Mr. McCarter: I object to that, your Honor.

The Court: Yes, if they stated it in the course of this examination it was part of the *res gestae.* It would have been perfectly proper if the examination had been an extended one for one member to perform one part of the examination and another member perform another part of the examination and then compare their joint efforts, their several efforts.

Q. (Question read.) A. No.

Mr. Cornish: I understand that question is overruled.

Q. (Question read.) A. If the inquiry is limited to the time during which the meeting was being held and the examination was going on.

Q. Well, he answered it "No" I believe. Did you hear any statement, or make any inquiry of the other members of the committee at any time—do not answer until objection has been passed upon—respecting what the other members of the committee did as to the cash? If your Honor please I ask this question respectfully in spite of your Honor's objection, on the ground that it is an admission. We are suing several defendants here, and what one said to another at any time is clearly an admission as against the one who said it and I think probably as against all, but certainly as against the one who made the statement subsequently at any time.

The Court: I think I will confine the conversations to conversations that took place in committee. If you want to refer to any specific conversation had with any particular member about a particular subject, of course that is a different thing, that is an admission.

Q. This committee met only twice a year I believe, is that correct? A. Yes.

Q. And the appointment was by the year? A. Yes.

Q. Two examinations for each committee during the year? A. Yes.

Q. Did you in any of the examinations where you were a member of the committee examine the cash? A. I think once I did.

Q. When was that, as near as you can recollect? A. I cannot recollect, I don't know.

Q. Now what did you do at that time respecting the cash? A. I went over the cash and counted it.

Q. And having counted it and found how much it was what did you do then? A. I compared it at that time with the total that was given to me, and I don't remember now just how that was.

Q. Well, where did you find that total, in some book of the bank or in some statement? A. I don't remember.

Q. You do not recall whether you compared the total with the total as shown in the paying teller's proof, do you? A. Not at this time, no.

Q. Or in the general ledger? A. I don't remember.

Q. Or in the cash book? A. I couldn't tell you.

Q. Now what did your committee do on December 14, 1912 with respect to the savings bank deposits, special deposits as they are known in the Roseville Trust Company? A. Personally I didn't do anything; but in regard to your question, that is about the committee.

Q. As far as you know tell me what any member of the committee did? A. I do not remember what was done at that time in regard to those accounts.

Q. And that answer applies also to the individual deposits? A. Yes.

The Court: Was there a separate savings bank account?

Mr. Hinds: Yes, your Honor, there were three books of deposits, individual deposits No. 1; individual deposits No. 2, simply

divided according to the alphabet, and then a third group of special or savings deposits, time deposits, as distinguished from demand.

A. I will state that this work was divided up among the different members of the committee and I had nothing to do with that end of it.

Q. Did your work on December 14, 1912 include anything except the collateral loans? A. No.

Q. Now I show you general ledger of the Roseville Trust Company on that date, as of the undated column between December 13, 1912 and the next business day, December 16, 1912, which is the book being Exhibit C-6, and ask you what you find as the aggregate of collateral loans on that day, December 14th, the day of the examination? A. Collateral loans on that date is $151,438.

Q. Now when you looked at the general ledger you found, did you not, that just below the balance as to any of the Trust Company's assests or liabilities on a given day there were columns of debit and credit to bring the amount from the previous day; you found that to be the fact, did you not? A. I didn't go into that detail, no.

Q. When you looked at the general ledger on December 14, 1912 did you look at any column whatsoever on that day than the mere balance column? A. That is all.

Q. Will you look at the next column, column for December 13th, and tell me what you find as the amount of collateral loans on that day, the day before? A. $51,438.

Q. That is exactly $100,000 less, is it not? A. Yes.

Q. What do you find the figure to be as of December 12th? A. $51,438.

Q. And December 11th? A. $51,433.

Q. And those are all right on the same page, are they not? A. Yes.

Q. What do you find for December 16th, the day following your examination? A. $51,538.

Q. Now on the day of the examination you do not find that there were any debits or credits whatsoever in collateral loans from the day previous, do you? A. No.

Q. Now you came back, did you not, a day or so subsequent to the 14th day of December, 1912, in connection with that examination? A. I don't remember at this time that I did.

Q. Did any of the members come back, as far as you know? A. Not as I know.

Q. Did your committee reconcile the bank accounts in depository banks on the occasion of that examination?

Mr. Stiefel: I object. The question should be directed to what this witness did or knows, and this is a question directed to the work of the whole committee. I understand that they are reconciled. Now suppose his answer was no; what difference does it make.

The Court: As far as they were together of course the witness can speak.

Mr. Stiefel: They might have to be reconciled by correspondence; I understand they were reconciled by correspondence.

A. That matter was left in the hands of the chairman of the committee and he took charge of it.

Q. You do not know whether the committee reconciled the bank accounts or not, do you? A. Personally, no.

Q. You never did know, did you? A. No.

Q. Now refresh your recollection from your report bearing your signature, December 14, 1912, which is found in the minutes, and tell me whether you knew at that time whether the bank accounts had been or reported to have been reconciled? A. It was reported to me that they were by Mr. Sexton.

Q. Well, that refreshes your recollection, doesn't it. Now look again at this report and refresh your recollection as to whether or not you came back subsequently in December 14th in connection with your examination as of that date? A. Possibly did at that time; I don't remember at this time that that was the case; evidently did.

Q. Evidently did. Well now, when you came back did you look at the ledger again? A. No.

Q. You had been attending meetings of the board of directors from month to month before this examination, had you not, for a long time? A. Yes.

Q. And you had received a written report which contained a statement of the collateral loans, had you not? A. I had received what?

Q. You had received and had a statement of the report of the bank's condition, which contained the amount of the collateral loans of the institution?

Mr. Cornish: You mean at the directors meetings?

Q. At the director's meetings. A. I believe so, yes.

Q. You studied those, read them over, did you not? A. I looked them over at the time.

Q. And in a general way you knew what the collateral loans were, did you not? A. Might probably at that time, yes.

Q. And you knew that there never, any time in the bank's history ever could be any such figures as $151,000, did you not, as shown in those reports; isn't that a fact? A. Yes.

Q. And if you looked in the general ledger and seen the figure $151,000 there as exhibiting the amount of the collateral loans, if you had done that you would at once have seen that that was fully $100,000—

Mr. Stiefel: I object.

The Court: Well, that is pure argument.

Mr. Cornish: Furthermore, the witness testified that that is not the book he looked in.

The Court: I overrule the question.

Mr. Hinds: I ask an exception.

Q. Did you at the time of that examination of December 14, 1912 know that the amount of collateral loans was nowhere near $151,000? A. I do not remember at this date what the amount was.

Q. I say did you know at that time, having refreshed your recollection at that time did you know at that that it wasn't any such amount as $151,000?

Mr. Cornish: He says he does not recall.

The Court: Well, that is hardly the proper question. You can ask him whether he knew what the amount was.

Mr. Hinds: He said he did.

A. No, I didn't say I did.

Mr. Hinds: He said that he read the reports from time to time and knew that they were not running any such figure as $151,000, as I recall.

Q. Well, I show you a paper which purports to be a statement of the condition of the institution as of December 2d, 1912 and as of November 25, 1912, and ask you if you recognize that as the copy of one of the statements that was handed to you shortly after those dates? A. I cannot recognize this now as being—

Q. Well, it is very similar to it, is it not?

Mr. Cornish: I object to that.

A. In a general way, yes.

Q. Did the statements that were handed out to you have the different figures labeled by alphabetical numbers? A. I don't remember that.

Q. You have no recollection at the present time whether the letters of the alphabet were used, or the names of the different assets and liabilities? A. No.

Q. And your recollection is not refreshed by seeing what I showed you and just referred to? A. No.

Q. Now following the work of individual members of this committee was there any general assemblage of the results by the committee as a whole on the December 14, 1912 examination? A. Only as Mr. Sexton found the results, took care of it.

Q. Where were those results set down by different members of the committee? A. In the hands of Mr. Sexton.

Q. Did you set down your result of the collateral loans? A. No; personally I did not make the examination of the collateral loans.

Q. What did your examination include then? A. My personal examination included simply the checking of the amounts as they were read off.

Q. Did this list which you are referring to checking up with Mr. Smith's list— A. Yes.

Q.—did that list contain details of other assets of the bank besides collateral loans, or was it a list which contained only the collateral loans? A. Collateral loans, only.

Q. Did you see any other lists prepared by Mr. Smith that were used in that examination? A. Yes.

Q. And was there a separate list showing details of each of the company's assets and liabilities? A. Yes.

Q. I read from your written report of that examination signed by you, wherein it says "The collateral loans were examined and the amount found as carried on the books." Did any of the other members of the committee duplicate the work which you yourself did as to the collateral loans, did any of the others check off the items of the actual notes with the list? A. Why the collateral loans were handled entirely by Mr. Sexton, and he took them and compared them with the books afterwards.

Q. And you did not do that at all? A. I simply saw the item in the book; as I remember it now the totals compared.

Q. Compared with what? A. The list.

Q. The total in the book compared with the total in the list? A. Yes.

Q. What book was it? A. I couldn't tell you.

Q. Did you personally check off this list with the collateral loans themselves? A. No.

Q. Well then you personally didn't do anything in the course of the whole examination, did you, except see that the totals shown on the list compared with the total in this book, which you do not know the name of; did you do anything else besides that one comparison? A. No.

Q. In the whole course of the examination? A. That is all.

Q. And you did not make any inquiries as to the result of what the others had done? A. Only in a general way.

Q. Did you hear any statement by the others as to the assemblage of the results of the several parts of the examination? A. No.

Q. Did you foot up the general ledger as of December 14, 1912? A. No.

Q. Did any of the other members of the committee make a footing of the component items of the trial balance, as shown on the ledger December 14, 1912?

Mr. Stiefel: I object, if your Honor please, that is asking about what other members did.

The Court: Well, in his presence.

A. Not in my presence, no.

Q. Did any of them state in your hearing that they had done so? A. No.

Q. Now does what you have told us about the December 14th examination, as to your part in it, and as to what was done by the others, and what was not done by the others and what was not done by you, hold substantially true for the examination of May, 1913? A. Yes.

Q. Now, in May, 1913, what did you do exactly in May, 1913, on that examination? A. Probably the same that I did the previous examination.

Q. That is the best of your recollection, is it? A. Yes.

Q. You do not recall having done anything except compare the total on a list of collateral loans prepared by Mr. Smith and checked by someone else with the figure in a book which you do not know the name of?

Mr. Cornish: I object.

The Court: This is direct-examination, and the better form is to ask him what he did. I understood him to say that he did substantially the same work on the last named examination that he did on the one about which you were inquiring. That is the way I understand it.

Q. Did you balance the cash in May, 1913? A. No.

Q. Did you check off the items of collateral loans with the list prepared by Mr. Smith? A. If I remember right, yes.

Q. Then you did do something in May which you did not do in December?

Mr. Sticfel: He did?

Q. Well, I will have to ask, did you in December, 1914 check off the individual items of collateral notes with the items as shown on Mr. Smith's list—1912?

Mr. Cornish: You mean December, 1912?

Q. December, 1912? A. I think I did the identical work that I did on the later date, simply checked off the different items.

Q. I am not asking you about the earlier date, December, 1912, did you check off yourself personally, other than Mr. Sexton, the individual collateral notes with the list prepared by Mr. Smith?

Mr. Stiefel: I object to the question as absolutely unintelligible. Did you do so and so, other than Mr. Sexton.

Q. I will withdraw the question and reframe it. In December, 1912 did you check off the actual collateral notes with the list of the same personally? A. If I remember right, yes.

Q. And did you do so in May, 1913? A. I checked off the amounts as they were called by Mr. Sexton from the notes.

Q. Who had the notes? A. Mr. Sexton.

Q. Was that true also in December, 1912? A. Yes, sir.

By the Court: Q. Mr. Sexton, in other words, as I understand, would take up the notes one by one and would give you the amounts and you would look on the list and check off the amount as he gave it on that list; that is the way? A. That is the way it was done.

Q. Did you add up the list in May, 1913 of collateral loans? A. I did not.

Q. Did Mr. Sexton in your presence? A. No.

Q. Did you compare the total of collateral loans, as shown on the list, with the total as shown in any book of the bank?

Mr. Cornish: That has already been asked and answered; he said he did.

Mr. Hinds: I asked him only in December.

The Court: This relates to May, as I understand it. It does not seem to be necessary to go over the matter in detail because the witness has said that he performed the same work or a similar work in May, 1912 that he performed in December, 1912. Now if they want to cross-examine on that why they may do so of course.

Q. Mr. Benjamin, in May, 1913 did you reconcile the accounts in the depository banks? A. I did not.

Q. Did the other members of the committee do so in your presence? A. No.

Q. Did any of the other members of the committee say to you that they had done so? A. Yes.

Q. Did any of them say that they had subsequently to the date of the examination procured advices from the several depository banks as to the items which were in the mails or in transit at the time of the May, 1913 examination? A. If I remember right, I cannot recollect in regard to that particular date but those items were always cared for by Mr. Sexton, and if I remember right there they were reported that they had been found correct.

Q. Are you now referring to the balance as reported by the depository banks on the date of the examination? A. Yes.

Q. You are not referring to information subsequently procured from the depository banks as to items which were not known to them at the date of the examination but which were then in transit? A. No.

Q. Now, Mr. Benjamin, did you make a footing of the general ledger as of the date of May 1913 examination? A. I did not.

Q. Did any member of the committee do so in your presence? A. No.

Q. Did any member of the committee say to you that he had made a footing of the general ledger as of that date? A. No.

Q. Did you inquire of any of them as to whether they had done so? A. I did not.

Q. Did any member of the board of directors inquire from you, or in your presence from any member of that committee, as to whether the general ledger hnd been footed? A. Not to my recollection.

Q. Now do you know what books of the bank you looked in in order to make a comparison with the amount of collateral loans as shown in the May, 1913 examination list? A. I didn't get that question.

Q. (Question read) A. No, sir.

Q. Who handed you the book or where did you get the book? A. The book was in the general office.

Q. And how did you happen to look at the book that you did look at, how did you select it? A. The footing was pointed out by Mr. Smith, and he simply compared it with the list he had.

Q. Did Mr. Smith say to you what the book was? A. No.

Q. Did the page show the day of the month and the year? A. I couldn't tell you.

Q. Don't recall? A. No, I don't remember.

Q. Did you look to see? A. No.

Q. Did you look to see whether the book he was showing you was the proper book to look into to make the comparison which you were making? A. No, sir.

Q. Did you ask him what the name of the book was? A. No.

Q. What were his words as nearly as you can recall them? A. Why, I cannot at this time tell you what his words were; he simply pointed out the footing there as showing the result, when we compared the result.

Q. Well, did he use the word "book" at all, as far as you can recall? A. I don't know.

Q. Were there other books?

The Court: Well, he did show you a book? A. He had a book laid out on the desk there and it was open.

By the Court: Q. And he showed you the footings in that book? A. Yes.

By the Court: Q. And that is all you know about it? A. Yes.

Q. Now was this the book that Mr. Smith showed you in May, 1913; I am showing him Exhibit C-6. A. It doesn't at this time look to me like the book.

Q. Did the column at which you looked in the book in which you did look contain any obvious interlineations or erasures? A. No.

Q. Or corrected figures? A. No.

Q. What did Mr. Krug do so far as you personally observed in the May, 1913 examination? A. I didn't see Mr. Krug do anything; I understood that he examined the cash, he counted the cash.

Q. Where did you get that understanding? A. From general talk among the committee.

Q. And was that talk held prior to or after or during the examination? A. He was appointed to count the cash.

Q. By whom? A. By Mr. Sexton.

Q. Chairman? A. Yes.

Q. Did you hear him say that he had counted the cash? A. Yes.

Q. Did you hear him say what particular details of work he had performed in counting the cash, and in connection therewith?

Mr. Cornish: Objected to as incompetent.

A. I did not.

Q. Did you hear the result of his count? A. No, sir; I might have done so at the time but I do not remember now what it was.

Q. Do you recall whether or not he stated after counting the cash that he had found certain things in there recorded as cash which were not cash? A. No.

Q. Did you hear Mr. Krug say that he had found the cash to be correct? A. I do not remember at this time what he said about it.

Q. On the occasion of the May, 1913 examination where was it performed? A. In the directors' room.

Q. That was in the rear of the bank? A. Yes.

Q. What time of the day did you go there? A. Four o'clock.

Q. At Four o'clock on the day as of which the examination was made; is that right? A. Yes.

Q. Whom did you find there? A. Mr. Sexton, Mr. Banister, and Mr. Krug if I remember right.

Q. You found Mr. Smith there, did you not? A. Yes.

Q. Any of the other employes there? A. I think they were.

Q. Was Mr. Smith working on any of the books during the examination? A. Not that I know of.

Q. Did you take any measures to see that he did not make any entries in the books during the course of the examination? A. No.

Q. Did it come to your attention during the

period of your being a director of the Roseville Trust Company that Mr. Smith was engaged in any outside business? A. I knew of it by general conversation.

By the Court: Q. Well, before you go to that there is one question that I would like to ask. You say you went there at four o'clock and made this examination. Now how long were the committee engaged in making the examination? A. I think about three hours if I remember right, in that neighborhood.

By the Court: Q. And at the end of the three hours what was done? A. The result was placed in the hands of Mr. Sexton.

By the Court: Q. Did Mr. Sexton then prepare a report? A. After he had communicated with the corresponding banks.

By the Court: Q. Then as I understand, your examination lasted for three hours, you then adjourned, Mr. Sexton was deputized to get information from the corresponding banks? A. Yes.

By the Court: Q. And when he received that information he drew up the report? A. Yes.

By the Court: Q. And then you all signed it, is that it? A. Yes.

Q. And is that report the report that I have just shown you in the minutes? A. Yes.

Q. And that applies to both the examinations, as to the report being in the minutes? A. Yes, to the best of my knowledge.

Q. And also his Honor's question applies to both examinations, as to your going there at four, working about three hours, deputizing Mr. Sexton to get advices from the depository banks;

is that correct? A. Well, I say three hours; it might have taken longer, I do not at this time remember just when we did get through.

Q. But in a general way that was the course in both examinations, was it? A. Yes.

Q. But you did convene subsequently on December 23, 1912, did you not? A. Why yes, in the records we did; I do not remember it now.

Q. You have no recollection of what you did on that date? A. No.

Q. Now do you recall in the case of the examination in April, 1912 what the defendant Dunn did in connection with it? A. Who?

Q. The defendant Edward D. Dunn? A. I do not remember now.

Q. I show you report presented on May 8, 1912 of the committee's examination as of April 11, 1912, bearing your signature, and I ask you if that is the signature of Edward D. Dunn? A. I don't know what, his signature is there, that is what is written there, I don't remember at this time what he did at that time.

Q. Does this refresh your recollection so as to enable you to say he was a member of that committee and took part in its examination? A. I should say that was correct.

Q. Well now, do you recall what part he took in the examination? A. I do not.

Q. I call your attention again to the report and ask you how many men took part in the examination?

Mr. Cornish: Do you mean how many men signed the report?

Mr. Hinds: No, how many men took part in the examination.

Mr. Cornish: Why show him the report?

Q. Because I want to give him every possible aid to refresh his recollection? A. I do not remember how many at this time.

Q. Does not the fact that three men signed the report refresh your recollection at all in the matter as to how many men took part in the examination? A. No.

Q. Now is it true as of the April, 1912 examination, as of the other two that you have testified about, that your part had to do only with the collateral loans?

The Court: Has he not gone all over that?

Mr. Hinds: No, this is the first time we mentioned the April, 1912 examination.

Mr. Cornish: I think he ought to ask him what he did at this examination of April.

The Court: Yes, if he recalls; he may not. Do you recall anything about the April, 1912 examination?

A. No, I do not.

By the Court: Q. Can you state anything that took place at that time? A. I cannot at this time, no.

Q. Can you state, after having refreshed your recollection from your report as of April, 1912, anyone who was present and took part in the examination except yourself? A. Why Mr. Sexton was there.

Q. Can you recall any others? A. No, not at this time.

Q. While you were a director of the Roseville

Trust Company did you know that Mr. Smith was engaged in any outside business?

Q. (Question read.) A. Only through hearsay.

Q. Who told you that he was? A. I couldn't tell you.

Q. What business did you hear that he was engaged in? A. Why I learned that he was connected with some automobile concern.

Q. Was it the Oakland Motor Sales Company? A. Possibly.

Q. Well, does that name refresh your recollection so that you can say that to the best of your recollection it was? A. I never had any personal dealings with him in that line, so that I cannot tell you.

Q. Did you make any inquiry as to what the business was?

Q. Did you learn anything further respecting Mr. Smith's outside business, other than that he was engaged in an automobile, or connected with an automobile business?

Mr. Stiefel: I object, your Honor.

A. I did not.

Q. Well, did you make any inquiry after learning that he was connected with an automobile business as to what his connection was and what the business was?

Mr. Cornish: I object.

The Court: I will allow that question to be asked.

A. My knowledge of that is only of a general nature, and I didn't know anything about it.

Q. You have not answered my question. Did you make any inquiry? A. I did not.

Q. When you learned that he was connected with an automobile business did you learn what sort of relation his connection was, whether that of owner or anything else?

The Court: He said he did not know anything about it except that he was connected in some way with an automobile business. You can ask him whether he heard what the nature of his connection was. What was the nature of the connection, if you heard anything about that?

A. Why, I don't know anything more than he had some connection with a concern of that character.

The Court: What counsel asks you is whether you knew what that connection was? A. No, I didn't know.

Q. After learning or hearing of a connection of Mr. Smith with an automobile business did you make any inquiry as to whether or not he was connected with any other business? A. No.

Q. Did you know while you were a director, or hear while you were a director, that Mr. Smith was connected with the Home Ice & Products Company? A. I did not.

Q. Did you hear he was connected with the Dunellen Coal & Supply Company? A. I did not.

Q. Did you hear he was connected with the Inter-City Land & Securities Company? A. No.

Q. After reading or hearing read the Commissioner's letter of May 14, 1909 did you make any inquiry yourself as to the previous career of Mr. Smith prior to his coming into the Trust Company? A. I did not.

Q. Did you subsequently to the reading of that letter make any inquiry as to whether or not Mr. Smith was permitting loans to be made of the funds of the institution which he did not report to the board of directors? A. I did not.

Q. Subsequent to reading that letter did you hear any member of the board of directors at any time discuss the question of whether or not Mr. Smith was continuing in his practice of loaning the company's money unbeknown to the directors? A. No.

Q. Did you on the occasion of any of your examinations as a member of the Examining Committee check up and see whether the collateral loans listed by Mr. Smith and examined by you had been authorized by the Executive Committee or the board of directors? A. I did not.

CROSS-EXAMINATION by Mr. Cornish:

Q. Mr. Benjamin, you were on the Examining Committee?

The Court: What is your business? A. Shoe business.

Q. Where are you employed? A. Banister Company.

Q. And in what capacity? A. Foreman.

Q. Foreman of what? A. Foreman of stitching room.

Q. How long have you been employed there? A. About thirty years.

Q. You are still there? A. Yes, sir.

Q. Where have you lived during that time? A. In various sections of Newark.

Q. Did you live in Roseville for any of the time? A. About twenty years.

Q. Did you live in Roseville at the time you were a director of the bank, the Trust Company? A. No.

Q. Now Mr. Benjamin, you stated that you were on all the Examining Committees except 1911; was Mr. Sexton chairman during all of that time? A. Yes.

Q. What was the practice in regard to calling the meetings of the Examining Committee? A. We were notified, the different members of the committee was notified by Mr. Sexton that an examination would take place at a certain date.

Q. And you gathered together on that date? A. Yes.

Q. In the directors room of the bank? A. Yes.

Q. And did Mr. Sexton then take charge of the meetings? A. He did.

Q. Did he outline the work of each member of the committee? A. He did.

Q. Did he sometimes give to one member one part of the work and sometimes another part? A. Yes.

Q. You did not at all times do the same work? A. Not at all times, no.

Q. Have you any definite recollection as to the work that you did at any particular meeting. I mean as to whether you examined the loans or the cash at any particular meeting? A. I haven't any at this time, no, I can't tell you.

Q. Then the testimony which you have given in regard to your work on the examining committee is your general recollection of what took place at the different meetings? A. Yes.

Q. Now you spoke of examining the collateral loans with Mr. Sexton, I think? A. Yes.

Q. Mr. Sexton, I understand, took the loans, the collateral and the notes and handed you a list and called off the notes and the amounts and you checked up with the list? A. That was the plan.

Q. And found that the notes as they were called off agreed with the list? A. Agreed with each item, yes.

Q. Each item agreed with the notes that were called off, and the total; so that they were all correct, all the items were correct? A. Yes.

Q. And then you compared the total with the total shown on the general ledger? A. Yes.

Mr. Hinds: I object to that, your Honor, as insidiously bringing out from the witness that he examined the general ledger, when I repeatedly tried to get him to say what the book was he examined; he said he didn't know, he could not recognize it, when I showed it to him; he said Mr. Smith did not tell him what it was and now Mr. Cornish slips in the word "general ledger" in a question, and promptly brings out the expected answer yes. I think it is unfair.

The Court: I understood the witness to say he had compared the aggregate of the items with the amounts stated in the general ledger; that is the way I understood him, but when you called upon him to identify the general ledger which was used he was unable to do it, he said that as far as he could recall none of the books which you presented to him corresponded with the book which he had seen at the

time. That is the way I understood his evidence.

Mr. Hinds: But your Honor, I asked him repeatedly as to what the name of the book was that he examined and he couldn't tell me, and Mr. Smith did not tell him.

By the Court: Q. Well, do you remember the name of the book? A. I do not.

The Court: Then counsel will of course substitute "book" for "general ledger."

Q. At the same time that you were examining the collateral loans was some other member of the committee examining the cash? A. Yes.

Q. And were the books of the company examined at the same time? A. Yes, that is, to some extent, it wasn't finished at that time.

Q. Was any member of the committee at work on the books while you were at work examining the collateral loans? A. Yes.

Q. Did Mr. Sexton assign somebody to examine the books? A. I think Mr. Sexton did that himself.

Q. You say it is your recollection that Mr. Sexton himself examined the books of the company? A. At a later date, yes, I think he took up the individual accounts there after this general examination at that time when the committee, when the whole committee met.

Q. That is, he took the results from each of the members of the committee, and compared those results with the books? A. Yes.

Q. What did Mr. Sexton do in these examinations? A. At the time that the examination was made he assigned the different members to do the various work, and after that was gone over

Mr. Sexton took charge of it and corresponded with the banks and examined the books and made the comparisons.

Q. And drew up reports? A. Mr. Sexton took charge of the meetings, took charge of the collateral loans, in my case, and called them off and I checked them up with the list.

By the Court: Q. That you have stated several times. What else did you see him do? A. And he took the list, together with myself, and we went into the banking room and made the comparison with the book. Now just what that book was I cannot tell.

Q. What else did you see him do? A. Nothing.

Q. What did Mr. Sexton say at the meeting in regard to the examination of the books? A. I don't remember now what it was.

Q. After you compared your total as found on your examination of the collateral loans with the books, what did you do? A. Nothing.

Q. Who took that statement? A. Mr. Sexton.

Q. And what did he do with it? A. I don't know.

Q. After the day of the examination did you meet again before the report was handed in to the board of directors A. I cannot say that we had a regular meeting, we got together, some times we met, simply he and I, or he and somebody else has gone over it and the report signed.

Q. Did he make any report to you at that time? A. Yes, he told me the general condition of the examination and what he had found.

Recess.

CROSS-EXAMINATION by Mr. Stiefel:

Q. How old are you? A. Sixty-five.

CROSS-EXAMINATION by Mr. German:

Q. So far as you know did Mr. Smith or any of the other employes of the bank know when your examinations were to be made? A. They did not.

Mr. Hinds: I object to that and ask it be stricken out, first, on the ground that it is not proper cross-examination, and in the second place because it is not a subject that is brought out on direct-examination, and that it cannot possibly be within the witness's knowledge as to what Mr. Smith knew.

The Court: Well, the witness can state whether or not it was the practice of the committee to notify Mr. Smith in advance that they were coming.

Q. Or any of the other employes of the bank? A. It was the custom among the committee there not to notify anybody.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. Now Mr. Benjamin, when did Mr. Smith hand you the carefully prepared list that you say was what you made your comparisons with, showing the detail of collateral loans, for example?

Q. I will leave out the word "carefully." I will repeat the question. When did Mr. Smith hand you the list of collateral loans which you compared with the items themselves on the date, December 14, 1912? A. Those lists and the

papers were given to Mr. Sexton, they were not given to me at all.

Q. Well, now, when did you first see the list of collateral loans? A. When they were on the table for examination.

Q. How is that? A. When they were placed on the table for examination.

Q. Was that at four o'clock on the afternoon of December 14, 1912? A. I couldn't tell you about the date, I don't recollect.

Q. How long after you arrived at the bank that afternoon did you see the list? A. Possibly a few minutes.

Q. Now that list was only one, namely, collateral loans, out of the fifty or more items of assets and liabilities generally classified of the bank, was it not; that is, there were other—

The Court: Well, what did the list comprise, what was there in the list?

Q. What was there in the list other than collateral loans? A. I don't remember how many different lists there were, there were a number taken care of by different members of the committee.

Q. Separate lists? A. Separate lists.

Q. And each list detailed a given classification of the bank's assets or liabilities; is that correct? A. Yes.

Q. They were all prepared by Mr. Smith? A. Yes.

Q. They were all there when the committee went in to examine on the afternoon of December 14th, 1912; is that right? A. Yes.

Q. You know that Mr. Smith did not prepare these numerous detailed lists every afternoon? A. I don't know who prepared those lists.

Q. Well, they were prepared especially for your examination, were they not? A. I presume so.

Q. Well now, does that refresh your recollection as to whether or not anything was brought to Mr. Smith's attention as to the fact that there was about to be an examination. Do you desire to correct your testimony in view of your recollection now of these prepared lists that you had at hand when you got there? A. I don't recollect, I couldn't tell you, I don't know.

Q. How long a list was this list of collateral loans, several pages? A. No, it was all on one long sheet.

Q. You indicated about two and a half feet? A. Well, possibly more than that.

Q. And how about the other lists that you saw; were they quite extensive lists containing many details? A. Quite a number.

Q. Now Mr. Benjamin, did you know at the time you were a director of the Roseville Trust Company and a member of its Examining Committee that the statutes of New Jersey require that there be on hand in available funds at least fifteen per cent of the amount of the immediate demand liabilities? A. I didn't have it in mind at the time.

Q. Did you know at the time you were a director of the Roseville Trust Company and a member of its Examining Committee that according to the statute of New Jersey—

The Court: Oh, no. Your questions are undoubtedly open to the objection that they are argumentative. You are trying to introduce an argument all the time.

Q. Did you have in mind at the time of your examination as of December 14, 1912 that the law requires at least three per cent of the immediate demand liabilities of the bank to be in cash, that is, requires the cash to an amount at least three per cent of the amount of the immediate demand liabilities. Did you have that in mind in making the examination of December 14, 1912? A. I think not.

Q. Was that subject referred to by any member of the committee on that occasion, as far as you know? A. Not that I remember.

ELMER K. SEXTON, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. Assistant superintendent of schools, Newark.

By the Court: Q. Did you have any other business? A. No.

By the Court: Q. Except this? A. No.

Q. You were the chairman of the Examining Committee of the Roseville Trust Company for a long period, were you not, and particularly for the year 1912? A. I was.

Q. And 1913? A. I was.

Q. Did you assign to the several members of the Examining Committee their several parts of the work of examination as of December 14, 1912? A. The assignment was more or less democratic; if a member had a preference, providing that preference was consistent with what I considered was to the best interests of the bank, he was

given that particular line, otherwise he was assigned.

By the Court: Q. Who gave it to him? A. Well, in the long run of course it was up to me because I was the chairman, and it would be with my consent at any rate, I presume.

Q. What did you assign to Mr. Benjamin in December, 1912? A. I cannot recall.

Q. Have you heard his testimony given? A. I have.

Q. Does that not refresh your recollection, at least as to its having included an examination of the collateral loans? A. It does not; I don't know whether he examined the collateral loans at that date or not.

Q. What did you do—A. May I continue that?

Q. Yes. A. So far as my recollection goes, and yet it is not fully know he didn't.

Q. In December, 1912? A. Yes.

Q. Did he examine the collateral loans in May, 1913? A. I can't tell; I don't remember, I should say.

Q. What is the best of your recollection? A. I don't know.

Q. In general did you divide the work in fairly even portions among the different members of the committee, or were there instances where a given man would receive—

The Court: Well, tell us how the work was divided.

Q. In general how did you divide the work with respect to amounts of division? A. The work was divided fairly even, so far as it could be so done. The matter of purchased paper, for instance, always or nearly always, I think I can

say always, two men were assigned to it because of the number of papers to be examined.

Q. Is it a fact that you ever assigned to one man no more than merely checking up collateral loans, and nothing else? A. To the best of my knowledge that was never so assigned.

Q. After each member of the committee, I am now speaking generally? A. I said collateral loans?

Q. Yes. A. Yes.

Q. After each member of the committee, I am now speaking generally, had performed his work were the results assembled by anyone? A. They were.

Q. By whom? A. By me and the other members of the committee who were at liberty; that is to say, who had completed their particular line of investigation and had checked them on the general ledger.

By the Court: Q. Will you tell in your own way just how these meetings of the committee were held, and what they did, and how long they lasted, and all about it; begin at the beginning and go right through, and give us your recollection as to the entire matter? A. I shall have to give it in a general way.

By the Court: Q. Well, give it as accurately and as much in detail as you can? A. In the first place notices were sent out to the various members of the committee that an examination would be held on such a date, the hour generally specified was about 3:15; the committee would meet at the bank, and after they had assembled we would talk over the matter, and by common consent and by direction the members were as-

signed to the various items which appeared on the general ledger, cash, purchased paper, collateral loans, etc. Each member—shall I go on?

By the Court: Q. Yes, go right on, and tell us the whole story, and the more complete it is the better. A. Each member then—so far as I know, and I feel sure it was done—examined the material of the bank and the account where it was kept, added the same, and then went to the general ledger to see whether it corresponded to the amount so added. After that was all done the chairman of the committee, together with as many as were available, that is, who had completed their examinations, checked up each item on the general ledger and footed the general ledger.

By the Court: Q. Go on, do you want to add anything, and, if so, what else? A. The committee then made a report. In the first place, however, the question of the corresponding banks, letters were sent out or caused to be sent out by the chairman of the committee to each of these corresponding banks; and the answers were received by the chairman at his home; they were brought over to the bank at a later date, the Examining Committee adjourning until that date, which was generally about a week, because one of the corresponding banks I believe was in Chicago. At that time the chairman, with as many of the Examining Committee as appeared, went over the accounts from the corresponding banks, and reconciled the accounts with the corresponding banks, and then a report was made, which was examined and signed by each of the members of the committee, or at least a majority

of them, and submitted to the board of directors. I think the minutes will show what was done with them.

Q. Did your examination as a rule include also an investigation and checking up of the liabilities of the bank? You have spoken of the materials and assets. A. Yes.

Q. And how was that done, first as to the deposits? A. The deposits; we asked two of the clerks of the bank to run off on the adding machine lists from those ledgers; then when we came back, sometimes it was not finished by the time we had to go home, when we came back, the first opportunity we had after that, we went over those lists and checked them up with the ledger to see if they were correct.

By the Court: Q. Mr. Benjamin has referred to lists; you have not explained that yet? A. There were particular lists, for instance, the purchased paper and the collateral loans, frequently when we came to the bank we found the lists tied up with the collateral loans; I presume it had been used by the bank itself from day to day.

Q. Did those lists bear any marks other than the mere enumeration of the items with the dates and amounts and names? A. That is all.

Q. Now let us take up the assets one by one, starting with cash. What did you do with respect to cash? A. What did I do?

Q. Yes, you personally? A. When it was assigned to me I counted it.

Q. And when was it assigned to you, if you can recall A. I cannot recall.

Q. And what else did you do when it was assigned to you, besides counting it? A. Counted

the cash, and examined the book where the account was kept.

Q. And what book was that? A. I don't know that I can designate the name of the book.

Q. Was it the paying teller's proof, was it the teller's proof book or books? A. I am not sure about that.

Q. Was it a book which contained the cash classified according to whether it is silver, gold, coin or bills? A. I do not recall that at this time.

Q. Did you compare your account of the cash with more than one book? A. Not that I recall.

Q. I show you a book labeled "Paying Teller's Proof" which is C-46 for identification, and ask you if when you counted the cash you made your comparison with the entries in such a book? A. I do not remember this particular book.

Q. I show you a book labeled "Receiving Teller's Proof," which is marked for identification C-51, and ask whether such a book was examined by you after counting the cash? A. It seems to me that we used a book of that kind but I cannot say positively about that; there were so many books and there were so many examinations that I cannot say.

Q. Did Mr. Benjamin on December 14, 1912 examine the general ledger in your presence? A. Examine the general ledger.

Q. General ledger? A. That is that has the daily trial balances?

Q. Yes. A. On which date?

Q. December 14, 1912? A. I cannot answer for any particular date.

Q. Did he on any date examine the general

ledger? A. I cannot positively state that, but I do know that the general ledger was examined by the chairman, and there was always more than the chairman present at the time.

Q. Then you did examine the general ledger on December 14, 1912, did you not? A. I did, that is if the report says so, that is, even whether the report says so or not; in every examination this general ledger was—I don't know whether this is it or not.

By the Court: Q. Well, do you recognize this book as the book that was called the general ledger? A. I recognize that there was a book similar to this, and it was like this book.

Q. Did it contain the same handwriting that you see before you? A. Well, I cannot tell you that.

Q. Are you familiar with the handwriting of Raymond E. Smith? A. Somewhat, but I could not identify his handwriting from anyone else, because I have a good many people—

Q. When you looked at the general ledger did you look at each and every figure in the column of the day on which the examination was made? A. You mean with reference, for instance if this were the date, or this were the date (indicating in book)?

Q. Yes. A. I did.

Q. Now turn to the column as of the balance of December 14, 1912? A. Is this 1912?

Q. This is 1912, and you have before you December 13, December 16; you do not find the words December 14 at the top of the column between that of December 13 and December 16, do you? A. No, I do not. Is this 1912?

Q. This is 1912. Now will you look at the item of collateral loans on that date; you are now looking at the debit and credit, and you find the balance next after; do you find the amount to be $151,438? A. I find it so on this book.

Q. Do you recall whether that was the figure that you saw on December 14, 1912? A. I cannot so recall.

Q. Does that figure convey to your mind any abnormality as to the amount of collateral loans? A. It does not.

Q. You had the amount of collateral loans reported to you from time to time as a director, did you not? A. I did not, excepting the reports which were filed in Trenton.

Q. Is it not a fact that Mr. Smith prepared and delivered to the members of the board of directors a typewritten statement of the assets and liabilities of the Trust Company on the occasion of each meeting? A. Yes, he did, but it was not given, it was on the table but was in the form which I think has been presented here with a letter before each item, which letter could not be interpreted by every member except it was interpreted in open meeting; I never tried to remember the key.

Q. And that included collateral loans, did it not? A. It did so include it, yes.

Q. And you did not observe particularly on that date whether or not the collateral loans appeared to be greatly in excess of what they had been reported from time to time? A. I did not know what the collateral loans was on that date and had no means probably of knowing, unless I had asked for the key and had it explained.

By the Court: Q. Are you speaking of the Examining Committee meetings, or are you speaking of the directors meetings? A. This is the board meeting.

The Court: You see we have been switched off from the Examining Committee meetings to the board meetings.

Mr. Hinds: Purposely, your Honor.

The Court: Well, I wanted to understand which of these meetings it was that you are now speaking of.

A. It was in the board meeting when, I believe the question states, I was supposed to know the amount of the collateral loans, which I did not know.

Q. Now when you examined the trial balance as of the date of a given examination did you have in mind that the law requires cash to be on hand to the amount of at least three per cent of the amount of immediate demand liabilities of the institution? A. I had always so understood.

Q. Will you look at the amount of cash, as it is shown on the general ledger for December 14, 1912? A. What is the question?

Q. I will withdraw that question. I show you a paper and ask you whether that is a copy of one of the reports that was handed to the board of directors on the occasion of its meetings, showing assets and liabilities? A. I don't know whether this is a copy or not.

Q. Well, in what respect does it differ from what you recall? A. I cannot answer that question.

The Court: That is a different question altogether. The witness has not been

asked whether a report in that general form was handed.

Q. Was a report in this general form handed to the directors? A. Not to the directors, no.

Q. Was it available at the meeting?

The Court: To whom? A. Generally—and I cannot say always by any means—these copies were on the desk or table, and presumably had been used by the executive committee in a meeting previously held.

By the Court: Q. You first saw them on the table at the directors meeting? A. Yes; very seldom handled them.

Q. Did you on examining the daily trial balances as shown in the general ledger on the occasion of these examinations look at the extensions of such balances from the previous day, as shown in the next column to the left? A. Yes, we did that from time to time.

Q. Did you, for example, look at the extension of the item collateral loans, as shown on the day previous to the December 14th examination, namely, fifty one thousand odd as shown here, and observe that there were no debits and credits, and that as the amount is extended to the next succeeding day, namely the date of the examination, is $100 000 higher; did you observe that on the date of the examination? A. I cannot state that; I feel quite sure if I had observed it it would have been so reported to the board of directors. May I have the question over again?

Q. (Question read.) A. I did not observe that.

Q. Did you on returning after making your examination compare the column of balances

as shown on the day of the examination with the column on the next succeeding day? A. The items of the column?

Q. Yes. A. Yes, generally that was done, I cannot say that it was done every time, but it was generally done.

Q. And was that done by the others who were present at the subsequent meeting as well as by yourself? A. It was done by those present and at liberty to be with me.

Q. And did you make that observation on the meeting subsequent to the examination on December 14, 1912? A. What observation?

Q. The observation as to the extension of the balances as of the date of the examination to the next succeeding day that you have just testified to? A. Of December 12, 1912?

Q. Yes. A. I cannot answer, I do not recall, rather.

Q. Do you recall whether you observed that on December 16th the total of collateral loans is $51,538 and that the only debit is $100, while the amount on the date of the examination the days previous is $151,438?

Mr. Stiefel: Before you answer that question. Of course all these questions are going on the assumption that this particular book was before these gentlemen on that particular day.

The Court: Well, the witness can state whether it was or whether it was not.

A. State whether this was the book or not?

By the Court: Q. Yes. A. I cannot state that, I do not know that, but a book of this kind.

By the Court: Q. You do not recognize that par-

ticular book as the book into which you looked? A. No, I cannot state that; it was a book of this kind.

Q. Did you observe that there was such discrepancy on the book which you did look at on that date? A. I did not.

Q. Did you observe at any time when you made an examination that the trial balance column contained on its face evidence of erasure or writing over or interlineations? A. I do not recall seeing anything of the kind.

Q. Look at the three figures which I have just referred to, namely, collateral loans as of December 13th, December 14th and December 16th respectively, and state whether you see there any evidences of interlineations, erasures or changes in the figures?

A. I do not see anything here.

Q. The page appears to be clean and untampered with? A. It appears to be, as far as I can see.

Q. I am not asking you as an expert, simply what you observe? A. It appears to be.

Q. Now will you look at the trial balance as of May 21, 1913 which is the date as of which an examination was made in that month, and I ask whether refreshing your recollection from the general ledger you can say whether on that date there appear evidences of interlineations, erasures or changes in the figures?

The Court: Are you asking him as to his judgment?

Mr. Hinds: As to his recollection as to what he saw on that date.

The Court: The witness has already stated that he does not recognize this book

as being the book that he saw; now your question assumes that that is the book that he has examined. You can ask him whether he recognizes that as a page of the book he examined.

Q. Do you recognize what is before you as the ledger page which you examined in connection with the May, 1913 examination? A. I do not know that this is the page, but it was a page similar to this.

Q. Did you on the occasion of that examination make a footing of the column in the general ledger? A. That was always done; I don't know further than that.

Q. If it was always done you did it on that date? A. That would be a natural conclusion.

Q. Did you on that date make comparisons between the several items of assets and liabilities as shown on the ledger page with the aggregates as found by the several members of the committee, each examining his given group of figures? A. That was always done.

Q. Do you find before you on the date, May 21, 1913, any indications of erasure or over writing of figures? A. On this particular sheet I find indications of it.

Q. Did you at any time find any interlineations or erasures on the general ledger? A. Not that I recall.

By the Court: Q. Or on any of the other books that you examined? A. Not that I recall.

Q. Do you recall whether you preserved a record of your own of the figures that were contained on the general ledger when you first made the examination on the day thereof, and later

checked up from that record the figures as they appeared in the same column when you returned on your subsequent visit? A. I get from the question that you want to know if I checked these items twice?

Q. To see whether they were the same?

The Court: That is the way I understood it; that is what you mean?

Q. Not exactly. I wanted to find out whether they were the same on the first day that they were on the second day of his examination? A. It was not the practice of the committee to examine the same figures twice.

Q. When did you make your footing of the general ledger, was it on the first day or on the second day? A. On the first day; that is, on the first day in so far as the figures were available at that time, and then checking up those particular figures later.

Q. Well now, when you made your footing on the first day you did include, did you not, in arriving at the total, figures which you had not yet checked up? A. Yes.

Q. Did you confirm, when you returned later to check up the accuracy of those separate figures which you had not checked up previously, that they were the same in the ledger on the second day that they were on the first day when you included them in the total? A. Those separate figures?

Q. There were some figures which you did not check up on the first day? A. Yes.

Q. But you included them in the total? A. Yes.

Q. When you returned the second day for the purpose of confirming the accuracy of each of the

figures which you had not checked up previously did you test the fact that they were the same on the second day in the ledger that they were on the first day? A. Yes.

Q. And were they the same in each case? A. They were the same in each case.

Q. What were the figures whose accuracy you did not check on the first day? A. Always the question of figures of the corresponding banks and there were sometimes only the ledgers, the individual ledgers were not checkd on that day.

Q. Did you personally at any time make the check of the individual deposit ledgers? A. Yes.

Q. What did you do in detail? A. We made a list, we had a list made, or made it ourselves and made by the clerks, after the list became too long generally the clerks would make it, after which we took the list and checked up the items through the ledger.

Q. When you say checked up the items through the ledger which ledger do you mean, general ledger or individual ledger? A. Individual ledger.

Q. Then did you make a footing of that list of items showing balances in the individual ledgers? A. That was frequently done, but I cannot say that it was always done; the items were taken off on the adding machine, and the particular items were; frequently it was done, but I cannot say it was always done.

Q. This list was a machine list, was it not? A. Yes, it was.

Q. At the foot of that machine list there was a machine total, was there not? A. Yes.

Q. Did you or any other member of the examining committee to your knowledge at any time

make a total of those items, other than the total made by the machine? A. Yes.

Q. About how long in feet was that list when they did make the total? A. It was a pretty long list.

Q. At least forty feet long? A. Yes, I should judge it was.

Q. Was it forty feet long at the time a total was made by hand or by brain? A. At any rate it was not made by us in that way the latter part of the time when it became so long.

Q. During the later part of the time you and your committee relied on the machine total, did you not? A. Yes.

Q. Who mechanically struck off the machine total? A. The two clerks in the bank.

Q. Was that done under your eyes? A. Yes.

Q. Was all of the mechanical work of striking off these balances from the individual demand ledgers done under your eyes? A. I am not sure that that was all done under my eyes; they were working there every afternoon that we were there, as long as we remained, and if we came back at night they were there.

Q. Did you take any measures as chairman of the examining committee to see that the mechanical operations of that machine in arriving at a total was not interfered with? A. Why, no; I thought the machine was in working order, and the operators were two of the employes of the bank.

Q. That is, you relied not only on the accuracy of the machine in arriving at that total but also on your belief that the machine had not been tampered with during the taking off of the sev-

eral balances and arriving at that total; is that correct? A. I think it is fair to assume that is so, yes.

The Court: I do not know anything about the affairs of this bank. Is there any proof that the teller or the bookkeeper acted in combination with Smith?

Mr. Clark: There will be proof, if your Honor please, that they repeatedly made false entries, there will be proof that certain of the other employes repeatedly made false entries.

The Court: I am talking about the teller and the bookkeeper.

Mr. Clark: Yes, the teller and the bookkeeper made false entries.

A. But I am inclined to think that the teller or bookkeeper, neither one, did this adding; I can tell the name of the ones who generally did it for us; the ones that generally did it were the ones who were rather clerks.

Q. What were their names? A. Mr. Thompson, I think, was one of them, and Mr. Mindnich, and I do not know whether there was another one below him or not, it seems to me in one examination there were two below Mr. Thompson, I am not sure about that.

Q. Did you take any measures to see that while Mr. Mindnich and Mr. Thompson were performing the mechanical operations in getting out a forty-foot machine list any one else had access to the machine? A. No one else had access to the machine so far as I know.

Q. How long, as you observed it, did it take them to run off this machine list? A. The ma-

chine list was—it would range probably from two to five hours, that is the list, and then running back to find wherein they had made a transposition of figures or something of that kind, and they would run back themselves and make the corrections in ink right on the list, themselves.

Q. It comprised some three thousand items, did it not? A. I do not know how many, but that is in the books, that will show.

Q. Each item had to be arrived at by opening the ledger and taking a balance from a given account, did it not? A. Each individual account had to take the balance which was there.

By the Court: Q. Were there three thousand accounts?

Mr. Hinds: Yes.

A. Yes; the balances I believe were in the individual ledger.

Q. When did this machine operation start; was that shortly after your committee arrived at the bank in the afternoon? A. As soon as we arrived.

Q. Did it continue uninterruptedly until it was finished, or was there a recess over the evening? A. It was always finished before we left, that is to say, it was always finished, there may have been some transposition, as I said, which would be corrected later if it could not be corrected that night.

Q. Having seen and relied upon this machine total from the machine list of individual deposits, did you compare that total in the instance of each examination with the corresponding aggregate in the general ledger? A. I did.

Q. I believe you said there were some occa-

sions when this comparison was made after the first day of the examination? A. Yes.

Q. And on those occasions did you compare the figure which appeared on the general ledger when you made the comparison with the figure as you had previously found it to be when you made the footing of the general ledger. I am now speaking of deposits. A. I shall have to have the question again.

Q. (Question read.) A. Yes.

Q. You found it in each instance to be the same? A. Yes.

Q. And had not been changed in the meanwhile; is that right? A. Yes, that is right.

Q. Did any examining committee, while you were a director of the Roseville Trust Company and a member of its examining committee, at any time report to the board of directors or to the executive committee that the available funds were below fifteen per cent of the immediate demand liabilities? A. We did not.

Q. Did the examining committee at any time report that the cash was below three per cent of immediate demand liabilities? A. We did not.

Q. Was that subject ever a matter of discussion in your presence by any director of the institution? A. It was.

Q. When? A. I cannot tell you, I do not remember.

Q. When it was discussed do you recall whether such condition was found to exist? A. I do not recall that it ever existed.

By the Court: Q. Why was there need of discussion if it never existed? A. The need of discussion, as I recall it, was that the cash reserve

was low, and it was low on several occasions, and the cause of its being low was spoken of as being because certain drafts were made rather heavy on the cash reserve, in a general way.

CROSS-EXAMINATION by Mr. Fairlie:

Q. Of course when you say low in regard to the cash reserve you do not mean below fifteen per cent? A. No.

Mr. Hinds: Three per cent.

Q. The general reserve you do not mean below fifteen per cent? A. No.

Q. Do you recall the date of the last examination made by the Banking Department? A. I am not sure, but I think it was in November, 1912.

Q. Nineteen hundred and twelve? A. Yes.

Q. Not long prior to the last examination you made? A. Yes—no, I think we made—

Q. Next to the last? A. Next to the last, we were there the next month I think, I am not sure however, of that date.

Q. Did you have occasion to look at the books at all at about the time the Bank Examiners were there? A. Not that I recall.

Q. When the members of the Examining Committee assumed their respective duties and examinations did they always in successive examinations each do the same work that he did before? A. They did not, they seldom did the same in two succeeding examinations.

Q. Will you explain what did take place in that respect? A. There was to a great extent a passing around through the various items and with the various books, so that possibly the person who counted the cash at one examination would

be the one who would, together with another member, examine the purchased paper, or he might examine the collateral loans and other accounts, and so on.

Q. So far as you know, you and your committee did everything that could be done to verify these accounts, so far as you knew?

Mr. Hinds: I object to that.

The Court: You can ask the question if you want to but it will give considerable scope to the re-examiner, if you insist upon it I will allow him to go into every possible mode of verification.

Q. I will withdraw the question. You mentioned lists of securities which you found when you started your examination as being tied up with the bundle of securities; did I understand you correctly? A. Yes.

Q. When you started to make your examination were they particularly prepared, as Mr. Benjamin gave us to understand, for the purpose of examination? A. I should say they were not, they were not so far as I had any knowledge whatever.

Q. As I understand it then a list of the securities was always kept on hand and was kept in with the securities? A. I presume that is the case, because it was always there when they came up.

Mr. Hinds: I object and ask that be stricken out, it is without the witness's knowledge.

The Court: The witness's presumption is not evidence.

Q. At all events your committee used that list merely as a means of convenience in checking up the securities, so that you would not have to write out a list of your own? A. In some cases the committee used it, and in some cases they did not use it.

Q. But when it was used? A. It was only for convenience.

Q. Now with the bills purchased, was a list of the bills purchased furnished by Mr. Smith when you came in? A. There was always a list with the bills purchased.

Q. Was kept with the bills purchased? A. Yes.

Q. Just as with the securities? A. Yes

By the Court: Q. You can tell us perhaps whether these lists were prepared for the committee, or whether they were lists which had been made for another purpose and were used by the committee? A. So far as I know these lists were not prepared for the committee; I cannot say positively that they were not, but so far as I was a member of the committee they were not prepared for the committee.

Q. When you got these various lists how were the items shown on those; take first the securities, how were the securities checked up with the list which you found in with the securities; what was the detailed operation through which you went to verify the list?

Mr. Hinds: May I ask whether by securities you refer to the collaterals accompanying collateral loans or the stocks and bonds?

Q. We will take first the securities which the institution had invested in; now when you came

to check them up? A. You mean the stocks and bonds?

Q. The stocks and bonds. A. The committee, or certain members of the committee, together with certain designated officers of the bank, I think there were three, any two of the three visited the depository, generally in the Prudential building, and they were taken out, examined and checked up by amounts and the paper examined.

Q. You mean paper by paper? A. Paper by paper.

Q. And amount by amount? A. Yes, every paper was examined.

Q. Were those lists added in any way? A. They were.

Q. And then with the collateral securities, securities put up as collateral for loans, what was the operation through which you went in respect to them? A. The collateral was examined, and the particular note accompanying the collateral, to see whether the collateral was sufficient, so far as our judgment was concerned, to cover the value of the note; the amounts were checked up, and the totals made from those amounts.

Q. And then in respect to bills purchased? A. That was a very long process and two people were assigned to it in every case, and every bill purchased was examined as to the amount of that particular bill, the time of the bill, that is to say, whether it was two months or four months, or whether it had been renewed or whether the interest had been paid, etc; each one of those items were checked up and totaled all the bills purchased; of course I have testified before

what was done with the total and how the total was made.

Q. And then when you came to checking up the liabilities in considering the accounts of depositors you took the balances from the individual accounts in the individual ledgers? A. Yes.

Q. Then after you got these various totals, or the respective members of the committee had their totals, you assembled where, in what part of the office did you go then? A. We generally went where the general ledger was kept, in the back part of the banking room.

Q. And there the books were before you? A. Yes.

Q. Now as a rule how many members of the committee would there be altogether there? A. That would vary; never one, always more than one; the chairman was always there; as many members would be there as were at liberty, that is to say, as many as had completed their particular line of investigation.

Q. And what would the chairman and such other members as were there before they opened the books actually do as they stood there? A. They would take the amounts as brought in by the various members of the committee after they had examined the securities, etc., as I have indicated before, and see whether the amount compared with or was accurate with respect to the amounts recorded in the general ledger, and check off each item of the general ledger in that way.

Q. Was there ever a time when you did not find that those items which you had computed outside first and then brought in did not coincide

with the totals in the ledger? A. There was not.

Q. And if you are shown here now those reports you turned in with the general ledger, purporting to be of the same date, and two or three or four hundred thousand dollars discrepancy, is there anything you know of of your own knowledge that can explain that discrepancy?

Mr. Hinds: I object on the ground that the question is speculative and argumentative.

The Court: Yes, the question is undoubtedly argumentative, and it calls for the opinion of the witness.

Q. But at any rate, when you did it with the books you had and the totals that were written in at the time you compared them they corresponded? A. Yes.

Q. More than that you cannot say? A. No.

Q. Now in the general ledger did you foot the totals? A. Yes, that is, I footed it or some member of the committee footed it while we were standing there.

Q. And at that time those footings were correct? A. Yes, the footings were correct at that time.

Q. So that if they are not correct now—

Mr. Hinds: I object to that in so far as it concerns the footings made in his presence. I have no objection to his saying that the footings were correct when he made them.

The Court: They were correct, as I understand it, in the sense that the members who were assigned to ascertain their correctness so reported.

Q. When I say correct I mean accurately added?

The Court: Well, the witness can speak as to his own additions; he cannot speak as to other people's additions.

Q. Now who prepared the reports? A. They were generally prepared by the chairman of the committee, although I am not sure that he always prepared them.

By the Court: Q. By that you mean yourself? A. Yes.

Q. Can you refer me to anything in the bylaws of the company which distinguishes in any way between the members of the examining committee, or makes the duties of one any greater or different than those of the other? A. There is nothing that I know in the regulations of the bank or the bylaws that makes one any different than the other.

CROSS-EXAMINATION by Mr. German:

Q. What experience had you had in the keeping of accounts or books before you became one of the examining committee? A. About the only practical experience that I had had was that I had been connected with building and loan associations since 1888, and that I was secretary of the building and loan association for something like four to six years.

Q. And as such director and secretary what experience did you have with the examination of books or accounts? A. You mean with reference to the building and loan? Well, I kept the books, and I enjoyed the work very much, so that I did a great deal of investigation in building and loan lines, and have done so since that time.

Q. What do you mean by "investigation"? A. Well, that has been two lines possibly, one the working out of new problems and new ideas with reference to building and loans, and the other is that I have received the reports of many building and loan associations and have examined them critically, so far as ascertaining their value in the way of making money, and their securities.

Q. When you speak of reports you mean financial reports? A. The financial reports.

Q. And as connected with the public schools of this city had you had any experience with mathematics or figures or books? A. Yes, we have quite a little experience in that line.

Q. State it. A. The question of bookkeeping of course I have taught.

Q. For how many years? A. That was in the evening school, probably about four years. Then the question of figures, of course we are always dealing with figures, especially in the superintendent's office.

Q. Before you were superintendent in what manner were you connected with the public schools? A. At first principal of schools and later secretary of the board of examiners, and later assistant superintendent.

Q. Now were you familiar with your duties as a member of this examining committee, as provided by section 22 of the bylaws of your Trust Company? A. I should have to look at 22.

Q. Which provides that the board of trustees shall appoint from its members annually an examining committee of five members, whose duty it shall be to examine the condition of the company at least once every six months or oftener if

required by the board, and perform such other duties as are mentioned in section 14 of the Act concerning Trust Companies, Chapter 174, Laws of 1899? A. I was familiar in a general way with those duties.

Q. Did you realize the importance of doing your work thoroughly as one of the members of this examining committee?

The Court: No, that will not do.

Q. Had you those duties in mind when you made your examination of the Trust Company's books and affairs? A. Yes.

Q. Did Mr. Smith, or any employee of the bank, to your knowledge have notice of the time that your committee were to examine the books? A. He did not.

Q. Did any of the other employees? A. They did not.

Q. How much time would the committee spend on each examination? A. That would vary, the time spent, we would arrive there at 3:15 and then continue until possibly seven o'clock, at times we would come back in the evening, and then we would return again in about a week to take up the question of the corresponding bank accounts, and if the individual ledger accounts had not been examined they would be examined at that time.

Q. Was it ever reported to you, or did you ever discover as a member of the examining committee or otherwise that any employee of the company, or officer, was performing his duty in other than a faithful manner?

Mr. Hinds: You mean other than the instances brought to his attention by the Banking Department?

Q. (Question read.) Other than as set forth in the letters from the Commissioner of Banking and Insurance, as admitted in evidence in this case? A. It was not so reported, neither did I so discover anything of the kind.

Q. Did you ever become acquainted with any fact or circumstance which made you believe that any officer or employee was not performing his duty? A. I did not.

Q. Did anything appear by your examination of the books or of the securities or papers or documents of the bank which caused you to believe that there was any irregularity? A. Nothing so appeared.

CROSS-EXAMINATION by Mr. Monroe.

Q. Mr. Sexton, are you connected with the building and loan association now? A. I am, yes.

Q. In what capacity? A. President.

Q. What is the association? A. Thrift Building and Loan Association.

Q. How long have you been such president? A. I think it has been eight years.

Q. Do you remember the number of shareholders?

The Court: Why investigate that? This investigation is going to be long enough without going into that.

Mr. Munroe: Just one further question.

The Court: No, I will not allow any investigation into that.

CROSS-EXAMINATION by Mr. Whiting.

Q. Of course, Mr. Sexton, these reports which you signed after examinations were true to the

best of your knowledge and belief at the time you made them? A. They were.

Q. Prior to the closing of the doors of the institution in August, 1913, and subsequent to the making of the reports which are in evidence, report of your examinations, did you learn that in that interval that your reports were in any wise untrue? A. I did not.

Q. Did you ever intimate to the board of directors, or inform them in any way that your reports were not true? A. I did not.

RE-DIRECT-EXAMINATION by Mr. Hinds.

Q. In the instances where you examined the cash in connection with any examination, did you examine the cash book? A. There was a cash book that was examined, yes.

Q. I show you what purports to be cash book C-41 for identification, and ask you if that is a cash book which you examined. That appears to be the period ending in May, 1911. A. This book was examined, that is to say a book that is similar to this was examined, I do not know whether that was the book.

Q. Did you ever find in the cash as you examined it anything other than actual money which was included in the total shown on the books? A. Not that I recall.

Q. Well, if you had found such you would have recalled it, would you not? A. I think I would, yes.

Q. If you had found, for example, returned checks in the cash drawer, whose amounts were needed to bring up the aggregate to the reported aggregate, you would have reported that as a de-

ficiency of cash, would you not? A. Returned checks that had been protested do you mean?

Q. Anything other than actual money. I use checks merely as an instance; any other object except bills or currency? A. If it were a clear case it seems to me that I should certainly have reported it; I know I certainly would have reported it to the board of directors.

Q. If you had found a check there, would you have called that a clear case, within the meaning of your previous answer? A. If the check had been protested?

Q. Had not been protested, simply was a check drawn on the Roseville Trust Company? A. It would depend on whether it had been charged off on the books or not.

Q. If you had found a check drawn on the Roseville Trust Company which had not been charged on the books, would you have included that as a proper item of cash as verified by you?

Mr. Stiefel: I object, if your Honor please.

The Court: The witness has not found any such thing.

Q. Did you find any checks there which were not charged? A. I do not recall finding anything.

Q. Or find any checks there which were charged?

Mr. German: I object to that as not being the subject of re-direct-examination.

The Court: Well, that I do not think is a very valid objection in a case like this, but the witness must be confined to what he did or did not see.

Q. Did you find any checks among the cash which had been charged? A. Which had been charged off on the books?

Q. Yes. A. Not that I recall.

Q. Did you find any checks at all, of any description, charged or uncharged, in the cash? A. Not that I recall.

Q. And if you had found any—

The Court: No.

Q. In April, 1912, your report, as shown in the minutes, shows that there were only three members of the committee yourself, Mr. Dunn and Mr. Benjamin; have you any recollection as to which of those returned afterwards in subsequent examinations? A. I think the statement is not correct as made by you.

Q. Well, the report shows that only three of them signed. A. That is a different proposition.

Q. Did others perform the examination than those who signed? A. I cannot tell that, I don't know, I do not recall rather.

Q. Well, can you recall which of those returned for the subsequent examination? A. No, I do not see how I can recall that.

By the Court: Q. As I understand it the report was not signed until the subsequent examination? A. No, it was not.

By the Court: Q. And only those signed who were present at the subsequent examination? A. Yes.

Q. Was a report ever signed by a member of the committee who had not taken part in the examination? A. No, sir.

Q. Did any member ever examine and not sign the report? A. I cannot state that positively,

but I am quite sure that that is the case, members did examine who did not sign.

Q. Did this ever occur in connection with an examination, that upon the committee arriving at the bank you found Mr. Smith and others still at work upon the day's bookkeeping and other operations, and that they asked permission to be permitted to finish their work before the examination should proceed? A. They were always at work when we came there; the particular account on which they were working was never examined until the books had been left by those employees.

Q. Did it ever occur that entries were, in your presence, while you were in the bank, made in any of the books after the committee had come there and announced its purpose to make an examination? A. I do not understand your question.

Q. I will try to make it clearer. Did it ever happen that after you had come and announced your purpose to make an examination Mr. Smith or any other employees continued to make entries in the books? A. It did not so happen so far as I know.

Q. Well, what work was it that they were permitted to continue after, as you have said, after your committee arrived and announced its purpose to examine? A. I have answered the question I think.

Q. I did not understand it. Will you repeat what the work was? A. The work which they were upon at that time, whatever it was, I do not know—that probably ought to be the answer to that question—I do not know, cannot recall, rather, now.

Q. Well, did the work as you observed it con-

sist of working upon a book or other record? A. I do not think that there was any book worked upon after we got there.

Q. Did you ever go there for the purpose of making an examination and find Mr. Smith working upon the general ledger? A. Not that I ever recall, and I think I would have recalled it.

Q. Did Mr. Smith ever do any work upon the general ledger, so far as you know, after the moment of your entrance into the bank and announcement of the purpose to examine it? A. He did not.

RE-CROSS-EXAMINATION by Mr. German:

Q. Do we understand you to say that when you went there to make your examination that the bank business went on as usual? A. No, it did not. You mean the—

Q. I mean the general banking business went on, did it; you did not close the doors of the bank? A. This was after three o'clock.

Q. Oh, I see.

G. ROWLAND MUNROE, sworn.

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. I am an attorney.

Q. And you were such during the period of the existence of the Roseville Trust Company? A. Yes.

Q. Did you have any part in the preliminary organization of the institution? A. I had a good deal of part, yes.

Q. Will you describe what you had to do with it from its earliest inception?

The Court: It does not make any difference how the company was organized, does it?

Mr. Hinds: The point was, your Honor, in showing the connection and reasons for the selection of the various directors, and their connection with one another and with Raymond E. Smith.

The Court: Well, I do not think that is important.

Mr. German: I object to the question.

Q. When did you first become acquainted with Raymond E. Smith?

The Court: Of course if anybody was selected with a view to conspiring with Raymond E. Smith in fraud of the bank, why that is a different thing.

Q. We do not claim that. When did you first know Raymond E. Smith? A. I should think it was in the spring of 1908.

Q. And that was how long before he became employed by the Roseville Trust Company? A. Several months.

Q. What was his occupation at that time? A. He was assistant cashier of the Second National Bank of Orange.

Q. After Mr. Smith went into the employ of the Roseville Trust Company what other business was he connected with?

Mr. German: I object to it, unless Mr. Munroe knows.

The Court: I think that is a preliminary question and is proper.

A. I knew he had some connection with the Oakland Motor Sales Company, I think it was called, and with the Home Ice & Products Company.

Q. Did you know what his connection with the Oakland Motor Sales Company was? A. Well, I understood it was his business really.

Q. And it was a trade name under which he as proprietor was engaged in the automobile business? A. I understood he was the proprietor.

Q. How early did you acquire that information? A. Well, I imagine shortly after he became so engaged.

Q. Where was this business operated? A. I am not sure, I think it was on Central Avenue.

Q. What was the nature of the business? A. There was a garage there and they sold cars.

Q. Was the extent of his operations ever brought to your attention or stated to you? A. Except as he stated to me from time to time something about it.

Q. And what did he say? A. He told me that originally he had loaned some money—

Mr. German: Pardon me, I object to this so far as it binds any of the other directors.

The Court: Well, I have already passed upon that. It will not bind anybody but Mr. Munroe, unless it be proved that it was brought to the attention of somebody else.

A. He told me one time that he had loaned some money to a friend who was in the automobile business, and the friend had not been able to repay the loan and had turned over the business to him, and he was very fortunate in having a

good manager who conducted the business and seemed to be conducting it successfully.

Q. Did he tell you how successful, in figures? A. No.

Q. Did he tell you when the business had been organized? A. No.

Q. By him? From what he said to you was it a business which required capital?

The Court: Oh, no.

Q. Now about his connection with the Home Ice & Products Company, when did you learn of that? A. I was associated with Mr. Smith in the formation of that company.

Q. And what was Mr. Smith's connection with the company? A. I think he was president and treasurer.

Q. And was he a stockholder? A. Yes, to some extent.

Q. And of course a director? A. Yes.

Q. Do you know the extent of his stockholdings in that company? A. I think he and I had originally the same amount of stock.

Q. How much was that? A. Eight shares apiece.

Q. What was the total capitalization? A. I do not remember; not very much.

Q. Well, the eight shares was a substantial part of the whole, was it? A. Yes; we did not control the majority.

Q. Roughly speaking what was the extent of the annual business of the Home Ice & Products Company? A. Well, it was formed to take over what was known as the Portland Ice Company, which had an ice house at Portland, Pennslyvania, I don't know, perhaps it would hold twenty or thirty thousand tons.

Q. When was that company organized? A. I do not remember the dates, I should imagine along in 1910 or 1911.

Q. Did you ever bring to the attention of any of the other directors, or hear discussed by or in the presence of any of the other directors—

Th Court: Put a single inquiry in a single question.

Q. Did you ever hear discussed by any of the other directors the fact that Mr. Smith was connected with the Oakland Motor Sales Company? A. I don't know that I did in any meeting.

Q. Any time? A. It was generally known among the directors, as an incidental fact.

Q. Can you give me any instance of that? A. I do not recall any particular instance.

Q. Did you report to any of the directors Mr. Smith's connection with the Oakland Motor Sales Company? A. I don't think I had any occasion to, I don't remember that I did.

Q. Did you ever hear the subject of Mr. Smith's connection with the Home Ice & Products Company discussed by or in the presence of any other director? A. Yes, at the time there was a note for $5,000 secured by contract with Mr. Drake of Newark for ice that was then in the ice house which was under contract to be sold and delivered to Mr. Drake, there was a note for $5,000 purchased by the Trust Company with that collateral, and at that time it was spoken of in the executive committee meeting and board meeting.

Q. Did that, as far as you know, get on to the minutes? A. Why the record of the transaction was in the minutes.

Q. Have you looked at the minutes with a view to finding that? A. No, but I heard it read this morning or yesterday.

Q. Did it appear on the minutes, so far as you know, that Mr. Smith was connected with the Home Ice & Products Company? A. I do not think it did.

Q. Was it the subject of verbal discussion at that meeting? A. Yes.

Mr. Stiefel: What meeting? Meeting of the executive committee or board of directors?

A. Meeting of the executive committee I judge.

Q. Was that subject discussed at any meeting of the board? A. I do not remember as to that.

Q. Didn't I understand you to say that a minute ago? A. The loan was discussed, of course, it was reported to the board; I do not remember what details were discussed before the board.

Q. Did you while a director know of Mr. Smith's connection with any other business? A. Well, the Home Ice & Products Company afterwards acquired the Dunellen Coal and Supply Company simply as an outlet for their business; I didn't know that Mr. Smith was an officer of that company, I do not know that he was.

Q. Do you know it now? A. I have understood so, I really don't know.

Q. Is it not a fact that the Home Ice & Products Company was a large borrower from the Roseville Trust Company? A. Not to my knowledge.

Q. Did you know of Mr. Smith's connection with the Intercity Land & Securities Company? A. I did not.

Q. Did you know of his connection with any other company at all? A. Not that I recall.

Q. While you were a director was it ever a subject of discussion at any meeting of the board of directors as to whether or not there was on hand, if there was on hand, in available funds, fifteen per cent of the immediate demand liabilities? A. The matter was reported on from time to time.

Q. And was it ever found to be below the minimum? A. No, not to my knowledge.

Q. As to the cash being three per cent, was that ever reported on? A.Yes.

Q. Unfavorably? A. No.

Transcript of shorthand report of the evidence given upon the trial of the above stated cause, on Friday, April 13, 1917, at Chancery Chambers, Newark, N. J.

Mr. Clark: Mr. Munroe asked to be excused as he had to be in New Brunswick this morning and I will now call Mr. Dunn.

EDWARD D. DUNN, sworn.

Direct-examination by Mr. Clark:

Q. Mr. Dunn, what is your occupation? A. I am an architect.

Q. And where are you so engaged? A. In New York City.

Q. And where were you engaged during the years 1912 and 1913? A. In Newark.

Q. What was your business connection then?

A. I was an architect, and I was also interested in some real estate.

Q. Well, you were an officer of John H. Dunn & Sons? A. Yes, sir.

Q. Did you have anything to do with the financial end of that concern? A. I was treasurer.

By Judge Collins: Q. It was a corporation, John H. Dunn & Sons, Corporation? A. Yes, sir, it was.

Q. You had something to do with their books? A. Yes, sir.

Q. When did you first become acquainted with Raymond E. Smith? A. When I opened my account in the Roseville Trust Company in 1910.

Q. Previous to that you had not known him? A. Never had seen him.

Q. When did you begin to do business at his garage? A. About 1911, when I first got a car.

Q. Now the account in the Roseville Trust Company, was that an active one of your firm? A. The firm never had an account in the Roseville Trust Company.

Judge Collins: The question assumes it was the firm's account; it was not.

Q. How frequently did you see Mr. Smith before you were elected a director? A. Well, only the occasions on which it was necessary for me to go to the bank. I can explain that, if I would be allowed to, a little more fully.

Q. We would like any information you can give us. A. In 1910 I opened an account, bank account in my own name; the only account that I ever had anything to do with in the Roseville Trust Company; the corporation of which I was a treasurer never had an account there, the ac-

count was always Edward D. Dunn, and I went to the bank, because I lived a very short distance from it, when I wanted to make deposits, and at that time I hadn't an office, when I first opened the account, downtown, I was running my business from my home, which was I think two blocks from the bank, and as occasions arose for me to go to the bank, before I was a director, to make deposits or to draw money for my payrolls, I went to the bank and on some of those occasions I saw Mr. Smith. Also in 1910, the year in which I first opened my account, I borrowed $1,000 from the bank; it was necessary for me on that occasion to see Mr. Smith because he was the treasurer of the bank and the active manager there, and only on such occasions did I ever see him.

Q. Did Mr. Smith ever ask you to be a candidate for director? A. I think so.

Q. You were elected in January, 1912 as a director; is that right? A. Yes, sir.

Q. And re-elected in January, 1913? A. Yes, sir.

Q. And for the full term of one year in each instance? A. Yes, sir.

Q. After you were elected a director we would be glad to have you tell us what you did to familiarize yourself with the affairs of the Roseville Trust Company. A. Well, I had read the bylaws, which were printed in a little book as I remember, and I understood my duties as a director to be to attend regularly to the meetings of the board of directors and to do whatever work was designated by the president of the Trust Company. I did all of those duties carefully and diligently and

conscientiously. To enumerate them would be to give a history of a number of meetings; I would be very glad to do that if that is what you want.

Q. No, the meetings of course speak for themselves. Do you recall any single duty that the president asked you to perform which you did perform? A. Yes, sir.

Q. What? A. I was elected on the examining committee the day I was elected on the board of directors.

Q. Anything else? A. Yes, he asked me to endeavor to get further accounts for the bank.

Q. I am not cutting short your answer, am I? A. No, I finished.

Q. Did you ever read the minutes of the Trust Company of transactions prior to your election? A. No, sir, I did not.

Q. Now coming down to the Examining Committee. You have heard the testimony given by Mr. Benjamin and Mr. Sexton? A. Yes, sir.

Q. You recall that you were a member; you served on the committee which made an examination in April, 1912? A. Yes, sir.

Q. The date has been testified to as April 11, 1912; is that correct? A. Yes, I suppose so.

Q. Now, Mr. Dunn, did you ever serve on any other examination? A. Never.

Q. Nor in any other institution, in any other banking institution? A. On an examination?

Q. Yes. A. Oh, never, no, sir.

Q. Then the facts with regard to this examination are fairly clear in your recollection? A. Fairly clear; it is five years ago.

Q. Yes, but you do not confuse them with some

other examination because there was none? A. I do not.

Q. Now, Mr. Dunn, will you be good enough to tell us what you recollect of that April, 1912 examination, beginning as his Honor indicated to one other witness yesterday by stating your arrival and just what you did, or what was done in your presence? A. I arrived at the bank very shortly after three o'clock, and I met there the other members of the examining committee; the only one whom I have very clearly in my mind was the chairman, Mr. Sexton, though I am under the impression there were two others. Mr. Sexton took us in back of the long rail there with the grill work above, which separated the customers from the banking department of the institution, and Mr. Sexton announced that he had come for the purpose of examining the bank, announced that to the employees of the bank, and said he wanted to take charge of all of the assets and material at the bank for the purpose of an examination. He talked with me as to what he would have me do, and decided to have me examine the purchased paper, all the bills purchased, the notes of the bank, all of the notes, the unsecured notes only of the bank, and I was led to the part of the bank which is the third section I believe back from the Orange Street side, it is still in back of the grill work but it is not in the cages where the tellers work or where the cash was or the books, it had a long counter, and Mr. Sexton brought to me quite a large bundle, almost five hundred thousand dollars worth, I believe, of purchased paper, of notes made in various amounts from, as I remember, five dollars up to a thousand

or five thousand dollars, I think there were very few, most of them were very small amounts, and Mr. Sexton asked me if I had experience and understood how notes should be made out and endorsed and dated, etc., and I told him I had; so he told me to examine every one of those notes to ascertain whether or not it were properly made out and dated and endorsed, and I did so, and after I was probably half way through that work, which was a very large undertaking because there were a great many of these notes, Mr. Sexton brought to me a list, typewritten, containing figures, and each figure corresponded with the amount on each note, and instructed me—

Q. No names on the list? A. I don't remember that. I remember that he instructed me to check off each note with the figure on this list; then to add up the list, to find the total, and then he came to me several times during my work there to see if I were doing my work the way it should be done, because it was my first experience there and he seemed very anxious to have the thing thoroughly done, and he assisted me in that way, though I thought I was doing them according to the way he required; so I did all of that work, I went over every note and found the date and found that it was not past due, and found that it was properly made out and endorsed, and then after that I checked up each note with this list and I added the list up, and Mr. Sexton brought to me on a little slip of paper a total, because it seemed I took quite a long time at this work, as I was doing it alone on that occasion, and told me that that is the amount that the notes should total and for me to add up my column to

see if it did, and they proved. Then Mr. Sexton also, understanding my experience with real estate affairs, led me to a drawer or a box, I am not sure which, something in the safe that contained quite a bundle of mortgages and bonds and abstracts of title and insurance policies, each one had a rubber band around it, and it was quite a bulky affair for a mortgage, and asked me to examine those to see if the abstracts were there and if they were up to the dates of the mortgages, that I had a great deal of experience with buying property and mortgaging it, and I knew that very thoroughly, and I went over each paper very carefully and each insurance policy, and I took down the date of the expiration of each insurance policy, and I found those to be all correct.

Q. Now what next? A. That was all I did on that occasion, it was very late in the afternoon then.

Q. Do you recall when you finished? A. I know it was very late in the evening, it was probably between seven and eight o'clock.

Q. Do you recall who was in the cage of the examining committee next to you? A. I do not, I don't believe there was anybody in the cage next to me; you see they were two cages away.

Q. Do you know who counted the cash that day? A. I do not, sir.

Q. Now having arrived at the total of these promissory notes, we will call them for simplicity, you compared the total with that given by Mr. Sexton? A. I did, sir.

Q. And did you have recourse to any other book? A. Not any, no, sir.

Q. So that while you were in the bank you did

not see a single book, inside of any book? A. No, sir, I did not.

Q. Did you ask for any? A. I did not, no, sir.

Q. Did you understand that in the list of notes that was given you they had included the day's business of April 11th? A. I don't recall that.

Q. But you were examining as of the close of business, were you not? A. Yes, sir.

Q. In your own business and financial experience you are familiar with the cash book, are you not? A. I am, yes, sir.

Q. Did you on this occasion ask to see the cash book? A. No, sir.

Q. Now you have already testified that you did not see any book, and I will go to this unnecessary repetition for just this one question, to ask you if you saw this collection of figures? (Showing witness book.) A. No, sir, I did not.

Q. Indicating general ledger as of date April 8 to 12, Exhibit C-6. Have you ever seen it prior to today? A. I may have seen it as I was making a deposit or walking around the bank.

Q. But as a director or examiner you have never examined it? A. Never, no, sir.

Q. What was the reason that you did not serve in December, 1912, illness? A. Very sick, yes, sir.

Q. Did you make any inquiry concerning the work that had been done by the committee?

Judge Collins: You mean the examining committee?

Q. The examining committee? A. I believe so, I do not recall that, that was five years ago, I do not recall that.

Q. But it was only a year, Mr. Dunn, little

over a year before the bank closed? A. Yes, sir, I believe so.

Q. And at the time of the closing of the bank all matters relating to the institution of which you had to do were brought rather clearly to your recollection at that time? A. Not all matters, not by any means.

Q. Many matters? A. Yes, some.

Q. Now when you found that Mr. Smith was carrying on or engaged in another business, this automobile business, did you ever communicate that information to the board? A. I found out before I was a member of the board.

Q. And after you became a member did you make any inquiry in the board concerning the board's knowledge of that fact? A. I do not recall that I did, but I believe I talked it over probably, I do not know.

Q. When you made this examination of the bills purchased were you also asked to examine into the financial solvency of the makers or endorsers? A. I was not, no, sir.

Q. Do you know of anyone on the committee who did? A. I do not, no, sir.

Q. Now following the completion of this listing up the committee met again, did it not? A. Yes, sir.

Q. When was that, about how many days apart? A. Oh, it must have been a week or ten days after.

Q. Tell us what happened then? A. We met at the Fidelity Trust Company vault where the Roseville Trust Company had a box in which it kept some of its papers, and we went to the box, to the vault, and took out the papers that were

there; there were some stocks and some bonds, and the Surety bonds covering the employes of the bank, and we checked over and took these separate securities and looked at each one and saw that they were there as the list that we had showed they should be there, and they were all intact and in good shape; then the officers who had come to the bank, one of whom as I remember was Mr. Smith, had come with us to the bank to open the safe deposit vault, as the rule required several designated officers to be present; the examining committee went apart, stood away or remained later until the others had gone, and went over some letters that one member of the committee had, which were the replies that he had received in answer to inquiries made of the depository banks.

Q. One member, do you say? A. As I remember it.

Q. You don't know who it was? A. I do not, I am not sure.

Q. Go ahead. A. And we found that the replies tallied with the figures that we had, as they should have tallied according to the books of our company, and that closed our examination.

Q. Well, you say "we found," then you took part in that? A. I was a member of the committee.

Q. No, no, but you say "we found;" did you see any of those replies? A. I did, sir.

Q. Beg pardon? A. Yes, sir, I did.

Q. And who else? A. Who else saw the replies?

Q. Yes. A. The other members of the committee.

Q. All of them? A. I don't know.

Q. Well, I would like to have the names of anyone else who saw them besides you? A. The only one I am sure of, being five years ago, was the chairman, Mr. Sexton, I am more sure of him because he dealt directly with me, and I remember it very clearly because he took such pains to go over the necessary matters, because he seemed so particular about them.

Q. Do you remember Mr. Benjamin being on the committee? A. I rather have that impression but I couldn't swear to that because it may have been from hearing his testimony.

Q. I show you your report, part of the minutes found opposite page 371 of the minute book, being Exhibit C-8, and ask you if that refreshes your recollection?

Judge Collins: On what subject?

Q. As to the membership of the committee and whom he saw attending? A. Oh, then I will just look at this.

Q. Yes. A. Mr. Sexton, Mr. Benjamin and Mr. Dunn.

Judge Collins: I did not hear that.

A. It is signed by Mr. Sexton, Mr. Benjamin and Mr. Dunn.

Q. Does that refresh your recollection that Mr. Benjamin served with you on the committee? A. It doesn't change my recollection any though, I would be willing to say that it is very probable he did, but I cannot visualize him there as I would like to do to say that I recollect.

Q. Do you recall any member who served on the committee who did not sign? A. I do not, no, sir, though I was under the impression there were more than three.

By Judge Collins: Q. More than three? A. I was under that impression, though that is just an impression.

By Judge Collins: Q. I understood you to say you were under the impression there were more than three? A. Yes, that is my impression.

Q. You stated you went over these replies from the depository banks; do you recall the substance of any of them? A. I do not, sir.

Q. What did you compare them with? A. A list of figures, a little memorandum of figures opposite the names of these banks, showing, as I understood it, the deposits that the bank books showed should have been at those banks on those dates.

By Judge Collins: Q. You mean the Trust Company books? A. Yes, sir.

Q. You saw those figures in the Trust Company's books did I understand you to tell Judge Collins? A. Oh, no, sir, I saw a memorandum of figures taken from the Trust Company's books, giving the banks.

Q. How did you know they were taken from the Trust Company's books? A. Well, that is what I assumed, they were.

Q. You had assumed that? A. Yes, sir.

Q. Now do you recall whether or not the reply from the depository banks stated anything else than the fact that they had on deposit on April 11th so much money to the credit of the institution? A. No, sir, I do not so recall.

Q. Would you say there was anything else in those replies but that? A. I do not recall.

Q. Now you have had considerable familiarity in balancing bank accounts of your own and

your firm, have you not? A. Well, what do you mean by considerable?

Q. Have you had any? A. Yes, I have had some.

Q. You have always balanced your own bank accounts? A. Oh, no, sir.

Q. Your individual account? A. Oh, no, sir.

Q. Have you ever balanced your corporation's account? A. Never; had a bookkeeper for that purpose.

Q. You never supervised as treasurer the work of the bookkeeper? A. What do you mean by supervised; stand over him while he is doing it?

Q. To the extent of ever balancing a single monthly balance cash in the bank? A. After he had done it?

Q. Yes? A. Yes, sir.

Q. How did you do it? A. I would go to the books and open them and look over the figures, also add or multiply or do whatever was necessary to arrive at totals that I wanted to prove to myself.

Q. Did you make any other investigation than that? A. I think not; I had confidence in my bookkeeper.

Q. Now Mr. Dunn, with regard to your general connection with the Trust Company as a director did you ever hear that the Trust Company was in need of funds? A. An explanation would be necessary with an answer to that question.

Q. Answer it yes or no, and then go on and give your explanation. Did you ever hear, the question is? A. Please repeat the question.

Q. (Question read).

Judge Collins: I object to the insistence by my friends that it should be answered

yes or no, because it is ambiguous, it is not certain that it can be yes or no; he said it needed an explanation.

The Court: Well, the witness is entitled to answer it fairly.

Judge Collins: That is all I ask.

Q. Any way, answer it any way. A. All right. I heard from the Treasurer, Mr. Smith, who called me up on several occasions, at least two occasions, that there had been unlooked for, sudden and unexpected heavy drafts, I remember one was sixty thousand dollars, as he told me, and I believe that was made by McCreery & Company of New York, and that that heavy draft just at that time coming so unexpectedly threatened to make the cash in the bank at that time less than the law required, if it were paid that day and the deposits did not come up to it, and he said "I am sorry to trouble you about it, but I know that you often made large deposits here and probably could help me out by sending up a deposit," and I replied to him that it happened at the time that there was some money due me at the Fidelity Trust Company, as I remember it, and that I would go right over and get the money and send it up, and I told him the amount, which I think was some ten or fifteen thousand dollars, and I did that, and I sent the money up to the bank on that occasion, and as I recall that happened twice, but only in such instances as that, and with such explanations as that, the unexpected drafts of those large amounts.

Q. Then the answer would be "yes"? A. Those are the circumstances.

Q. Can you give me the occasions by approx-

imate date? A. Well, I think they were either in the spring or the early summer of 1913, as I recall.

Q. And you attended some board meetings after each of those occasions? A. I did, sir.

Q. Did you make any reference to it in the board meetings? A. The subject came up at the board meeting; I am not sure whether I brought the matter up or not, but I remember being thanked and complimented for my quick action to help the bank under those occasions; I remember very clearly that the matters were discussed as to those large drafts, and the one of sixty thousand dollars as I recall, and as they were coming at a time when money was so tight and when there were so many of our customers who had been in the habit of paying off their notes finding it necessary to renew them and making this action necessary, and also the movement made by the board just at that time to make some concerted action in going out and trying to get new accounts where we could get higher deposits in the bank.

Q. What investigation, if any, did you make on either of those occasions to determine what was the actual situation of the institution? A. I inquired from Mr. Smith when I went up there if he had run ino any more such contingencies that had been any source of worry, and I was assured he had run into any more such contingencies that time all around, and everybody was complaining that it was hard to make collections and to get their money, that the entire deposits were not up as high as he hoped they would be, but the thing looked very favorable, and very shortly after that

I got an inquiry, procured a statement of the bank issued by the bank showing a very safe and proper balance in cash, and available funds.

By Judge Collins: Q. By "bank" you mean the Roseville Trust Company? A. Yes; that was also about that same time or I think just after it, so that it relieved me from that time on.

Q. You say you got a statement, where did you get it? A. I think I got it at the bank.

Q. And you made no further investigation than that? A. Not that I recall.

Q. Did you ever call to the attention of the president of the company the fact that Mr. Smith had specially requested you to make these deposits, the president of the Trust Company, Mr. Odell, the fact that Mr. Smith had requested you to make this special deposit? A. I think Mr. Smith spoke to Mr. Odell about that, and I think Mr. Odell thanked me and complimented me about it.

Q. What the witness thinks somebody else did should be stricken out. I have asked him if he did. You never did A. Yes, I think I did.

Q. Oh, you think you did? A. I do.

Q. And what did you tell Mr. Odell? A. I do not recall that, further than acknowledging his thanks for my action to the bank.

Q. In aiding them in this emergency? A. In this one emergency, yes, sir.

Q. Did you ever find that there was any difficulty at the Roseville Trust Company with your own account? A. Never.

Q. When you were in the bank on April 11th, and on some other date in connection with your examination you did not refer to your own ac-

count in the liability ledger? A. I was never in the bank in reference to an examination on any other date but the date on which I have just testified.

Q. So that April 11th is the only time that you were ever in the bank in connection with an examination? A. Yes, sir.

Q. And on that date you did not make any inquiry as to the status of your own account as shown on the bank's books? A. No, sir, I did not, I just had my book balanced.

Q. You did not have it balanced on that day, did you? A. No, April first.

Q. I show you what purports to be the cash book of the Roseville Trust Company as of April 11, 1912, identification C-40, and ask you if you will refer to the right hand page under that date and see if you can see any item under the head of bills purchased or its abbreviation with your name, or with the name "Dunn"? A. Yes, sir, I do.

Q. And what is the amount after it? A. Five thousand dollars.

Q. Did you receive any credit on that date? I will hand you your pass book.

Mr. Stiefel: What date is that?

Mr. Clark: April 11, 1912, the date that Mr. Dunn examined the bills purchased.

Q. Do you recognize this book? A. Well, there are some figures about the date I remember making deposits, I suppose it is mine.

Q. You would not say it was not your pass book; it bears your name? A. It does, yes, sir.

Mr. Clark: I offer this in evidence.

Judge Collins: It has not been proved yet. This has been out of his possession ever since the bank closed and the receiver took it in hand, and to assume it to be his and to be in exactly the same condition that it was in at the time he last saw it, I think I ought to make objection to that.

The Court: Well, you have an opportunity of examining it; if it is in evidence you have an opportunity of examining it and explaining or criticising any items.

Judge Collins: Later you mean, or now?

The Court: I think it is competent.

Judge Collins: Simply because I am not familiar with it, and he has not had it and cannot tell how it may have been altered.

Marked Exhibit C-103.

Q. Look at your pass book and see if you received credit on April 11th or thereafter for $5,000 or any amount approximating that that would represent proceeds of the bills purchased of $5,000?

The Court: The book speaks for itself does it not? Why do you want the witness to state what is in the book when you have the book right before you?

Q. Did you have a note discounted, or did you sell a promissory note to the Roseville Trust Company on or about April 11th, 1912? A. I do not recall.

Q. Will you refresh your recollection by an examination of your pass book for the sake of giving a better answer?

Judge Collins: I object to that on the ground that it cannot refresh his recollec-

tion unless it was some entry he made himself. This is the pass book that the company made; he did not keep his own pass book, and how could he refresh his recollection. As your Honor suggested, it either does or does not show for itself.

The Court: Strictly speaking, the witness is only permitted to refresh his recollection by memorandum made by himself at the time, but I take it in the case of a pass book a depositor very frequently examines the book from time to time.

Judge Collins: If he examined the book, and now looking at it can tell.

The Court: Something that he sees there might call up some facts which brings back his memory. I will allow the question to be asked.

Q. (Question read.)

The Court: You will speak from your own recollection. If anything you see in that book calls to mind something which you had not thought of before why you may answer.

A. This does not refresh my recollection in such manner. I could make a further statement.

Q. Did you find any note made or endorsed by you of the amount of 5,000 among the bills purchased which you examined on April 11th? A. I do not recall any such note; I am under the impression that I did not.

Q. Did you ever make any examination of your pass book entries to see whether they were correct or not? A. Yes, sir.

Q. And how often? A. Oh, very infrequently.

Q. So that it is possible that you deposited $5,000 in the bank and it did not get on your pass book, and you would not have known of it? A. I need an explanation in answering that.

By the Court: Q. I think you can answer that. A. I need a general explanation on that.

By the Court: Q. I think you can answer that, and if your counsel asks you you can give any explanation you please. A. May I have that question again?

Q. (Question read.) A. That is scarcely possible.

Q. Now Mr. Dunn, I show you your pass book, Exhibit C-103, and ask you if you can explain the insertion without date, under the item "February 27, 1913 $6,000" of the item $5,000? A. I think I can give an explanation.

Q. We would be glad to have it, Mr. Dunn. A. The item over which this alleged insertion is made was the last item in this book before it was balanced at the end of the month. My office at this time was in the Firemen's Building, corner of Market and Broad Streets, and the Roseville Trust Company was a number of miles away, up in Roseville, and I had a bookkeeper who took care of this pass book and all deposits, and all my books, and I made my deposits in the Roseville Trust Company to increase the deposits there and to help the bank as much as I could in that way; it is possible that the bookkeeper mailed a check, as he frequently mailed checks, for deposit, to the Roseville Trust Company, on account of his being possibly busy at that time and not able to make the journey of that several miles and back, and that deposit by mail would be made without the

pass book accompanying the deposit, and an acknowledgment would be received through the mail of the deposit, which was also the custom at the bank, and then it is quite probable that at a subsequent time the deposit here that is marked in blank, but which looks to me as though the date had been erased at some time, and which I question whether it had been really a blank or not; when the deposit was made of the subsequent or last deposit of that month the book may have been sent up or taken up by the bookkeeper or sent up by the telephone girl, who took care of the telephone and who, as I remember, lived up in Roseville, we used to frequently give it to her, and then the teller may have entered this last deposit of the month without entering the deposit that had been made by mail, and the bookkeeper when he took the book up to have it balanced may have insisted on them putting the deposit that had been made by mail in the book, that may have been the reason, or I can get the bookkeeper to prove it, I don't know, I will get the bookkeeper if you like.

Q. Do you see any indication of any erasure? A. I do, yes, sir.

Q. You say you see the date has been changed? A. I don't say the date, I say that in the date marked there has been an erasure made.

Q. But there is no date marked, is there, opposite the $5,000? A. That is where the erasure has been made.

Q. Then there is an erasure opposite the figure $5,000? A. I think so.

Q. That is your answer? A. Yes.

Q. Do I understand that your entire statement is based on any recollection on your part of the

occurrences in connection with this? A. Further than the custom with which I handled my account and my bookkeeper handled it.

Q. Do you recall any single incident in connection with this account that jibes with your statement of your custom, do you recall any fact concerning your bookkeeper calling this to your attention? A. Calling it to my attention?

Q. This $5,000 item? A. Oh, no, sir, I do not know that.

Q. So that your entire answer is based purely on what could have happened? A. Yes, you asked for an explanation.

Q. Now, Mr. Dunn, how many times did you borrow money at the Roseville Trust Company? A. Why I cannot now tell you the time, but I borrowed from 1910, from the time I became a director.

Q. No, but after you became a director? A. To the best of my recollection I think there was one time that I borrowed and one renewal.

Q. And what was the amount of that borrowing and that renewal? A. Ten thousand dollars.

Q. So that you never from January, 1912 when you became a director, borrowed $5,000 from the Roseville Trust Company? A. Not that I recall.

Q. You have had an opportunity to examine the minutes recently, have you not? A. Not all of them; I had an opportunity, yes, sir.

Q. Did you look to see whether or not you had made application in writing, as the law required, to borrow from the Trust Company? A. I did not, sir.

Q. You did not look for that? A. No; I saw it though.

Q. You saw what? A. I saw that the minutes stated correctly that I had made application in writing to borrow $10,000.

Q. Now did you find any such application referred to in the minutes with regard to any $5,000 item as of April, 1912? A. I did not see any, no, sir.

Q. What was the practice with regard to the board learning of the Executive Committee's transactions? A. The board of directors met immediately after the Executive Committee had held one of their meetings, a board meeting always succeeded immediately upon an Executive Committee's meeting, and the Executive Committee had lists of loans it had considered or had accepted or renewals, and the matters taken up at the Executive Committee to be referred to the board were referred to the board; as I think, Mr. Smith read the minutes of the executive meeting.

Q. Now it was the practice that the minutes of the executive committee meetings recited lists of loans? A. I am not sure of that.

Q. I will show you the minutes of a meeting of the board of directors held in April, 1912.

Judge Collins: At which he was present? Just look and see.

Q. Yes. Minutes of board of directors' meeting held on May 8, 1912; you were present you see. A. Yes, sir.

Q. Does that recite the reading of the minutes of the executive committee on April 16, 23, 30 and May 8? A. Yes, sir, it does.

Q. Now will you just glance through the minutes of April 16 which would be the first meeting date following April 11, and see whether there is

listed any loan or bills purchased bearing your name as maker or endorser? I do not want to take up time as to any but that 16th. I would be glad to have you look at the 23rd, but I do not want to delay the court now. A. This is the 16th, is it?

Q. Yes. A. No, I am not on the sixteenth.

Q. It does not show there? A. It does not show.

Q. I will give this to Judge Collins so that he may look as to any subsequent time. Now you have testified that the pass book was not in your possession subsequent to the closing of the institution; is that right? A. No, sir, I have not so testified.

Q. Well what is the fact about the custody of your pass book from the time the bank closed down to date? A. I had the pass book when the bank closed.

Q. You had the pass book when the bank closed? A. Yes.

Q. To whom did you deliver it? A. Well, my bookkeeper had it, I didn't have it.

Q. To whom did you deliver it? A. The bookkeeper had the written, as I believe, the printed request of the Banking Commissioner to have everybody having an account there return their books for verification to find out to just what extent Mr. Smith had—

Q. Well, you turned it over to the Banking Department? A. Yes.

Judge Collins: Finish your answer. I do not like to have an answer broken right off. To what extent Mr. Smith had—something. A. Mr. Smith showed me this request, and I told him to take the book to the bank to have it verified.

Q. Now coming down to the closing of the institution did you make any inquiry among your fellow members of the examining committee subsequent to the closing of the institution with regard to the examination in which you participated?

Judge Collins: Objected to as irrelevant, unless the purpose of it is stated. I do not understand what relevancy it has. Whether he after the bank closed made inquiries of his fellow members as to what they did at the examination. I do not understand the reason.

The Court: I do not quite understand the question.

Q. (Question read.)

The Court: What do you mean by that?

Mr. Clark: Mr. Dunn has testified that he did a very limited amount of work on the examination.

A. I beg your pardon, I did not testify that.

The Court: Well, he testified he did the work he has specified.

Mr. Clark: Yes, I mean the work he testified to was limited. Now then, I want to find out whether following the failure of the institution he attempted to learn from his fellow members what the scope of the examination had been as far as the other members of the committee were concerned.

Judg Collins: After the bank had closed.

The Court: I cannot understand how that evidence could be either valuable or competent.

Mr. Clark: Would it not be an admission, if your Honor please, as against members of the examining committee?

The Court: I overrule the question.

Mr. Clark: I ask an exception.

Q. Now Mr. Dunn, when the bank closed Mr. Smith went away, did he not? A. Yes, sir.

Q. When did you see him again? A. I think it was the day after he came back.

Q. And did he call on you at your house? A. He did, sir.

Q. For how long? A. Oh, I should say about a half an hour.

Q. He was not there all day? A. Oh, no, no, sir.

Q. And what was the subject of the call? A. I had telephoned to his counsel, or I believe it was his counsel, Mr. Ralph Lum, with whom, as I understood it, he was staying, and my purpose was to see if Mr. Smith could throw any light upon the whereabouts of the great amount of money that disappeared, and also to find out if he could throw any light upon the probable amount, because I was working at that time to resuscitate the Roseville Trust Company, to save the expense of liquidation and the other expenses attending a complete and total failure of the bank, which would come out of the depositors' money.

Q. Had Mr. Smith been in touch to your knowledge, prior to that, with the Banking Department? A. No, sir.

Q. So that you saw him before he had gotten in communication with them? A. I said to my knowledge; I do not know whether he had or not.

Q. You did not ask him? A. I don't think so, no.

Q. Now Mr. Dunn, you caused an examination to be made after the closing of the institution to

see what the amount of the loss was, did you not? A. I caused an examination to be made, but it was not allowed to be made to see what the amount of the loss was.

Q. Whom did you employ? A. Mr. Rohrbach, I think was his name.

Q. A former National Bank Examiner? A. Yes, I believe he was.

Q. Didn't he report to you the discrepancy shown by the books of the Roseville Trust Company? A. No, sir, he did not.

Q. Didn't he make to you a written report of any kind A. Yes, yes.

Q. And you have that report, Mr. Dunn? A. I think I have; I haven't seen it in years.

Q. Are you willing to produce it? A. Perfectly.

Q. On a subsequent hearing? A. Yes, sir, or anything else I can produce, I will be very glad to.

Q. I understood you to say that you added up the items in this bills purchased list? A. Yes, sir.

Q. And did it compare with the figures that Mr. Sexton gave you? A. It did, yes, sir.

Q. And you are sure that Mr. Sexton gave you all the figures? A. I am.

Q. And that you did not get them from Mr. Smith? A. Oh, perfectly sure.

Q. Or from any book? A. Yes, sir.

Q. Now did you ever at any time know that the amount of cash in hand and available funds was less than fifteen per cent of the immediate demand liabilities? A. Only the occasions of which I have testified, when Mr. Smith said they

were threatened to possibly be that way; I never knew anything except as I have testified.

Q. Did you on the occasion of that examination of the bank accounts learn whether or not anything was said about items in transmission, items in transit? A. It sounds familiar.

Q. It sounds familiar? A. Yes, sir, it does.

Q. Have you perhaps read it in some of the legal papers that have been served on you? A. I don't remember having read it in that.

Q. Did you sign any reports to the Department showing the condition? A. No, sir.

CROSS-EXAMINATION by Judge Collins:

Q. Now Mr. Dunn, examining counsel on the direct testimony framed his question so as to imply that this garage was Mr. Smith's garage; was that the fact? A. Not as I understood it, sir.

Q. What did you understand? A. I understood that Mr. Smith had a small interest in this garage, $1,000 or $1500.

Q. Where was the garage? A. The garage was on Central Avenue between Seventh and Eighth Streets, it was just a small, poor sort of a garage, it was not a pretentious one at all.

Q. What was the name of it? A. I think it was called the Oakland Garage.

Q. Did you keep your car there? A. I did, sir.

Q. For how long had you done so? A. From the time I got a car.

Q. And when was that? A. I think that was in 1911, about the spring; I always kept my car there because it was the nearest garage to my house.

Q. Nineteen eleven, and you kept your car there, and incidentally you heard Mr. Smith had a small interest in it? A. Yes.

Q. Did he have anything to do with the management of it to your knowledge? A. No, sir, I never saw him around there.

Q. Never knew he had any business connection with the garage? A. No, sir, I did not.

Q. You have said that the examination that you had to conduct was down to the close of business on the day that the examination was made; do you mean that that was so stated at the time, or you simply assumed that to be so? A. I assumed that to be so, I do not recall.

Q. Then you said that letters were read, I forget whether that was at the Trust Company's office or at the Fidelity, letters from the depositories? A. It was at the Fidelity.

Q. When the letters from the depositories were read at the Fidelity you said they tallied with the books of the bank, as you call it, or the Trust Company; do you mean that you had any books there, or that it was stated to you by someone that they did tally with the books? A. I mean that there were no books there, it was stated by someone that it did tally with the books.

Q. Who was it stated it? A. I think it was Mr. Sexton, the chairman.

Q. I just wanted to get that clear so that there would be no mistake. Who kept your bank account? A. My bookkeeper; his name was Smith too.

Q. And you do not personally have any knowledge about this entry of $5,000 that was interlined? A. No, sir.

Q. You said that it looked to you as if there had been an erasure on the date line? A. Yes.

Q. You did not look on the opposite side of the leaf? A. I don't think so.

Q. Look at the opposite side of the leaf and see if it may not have been the trace of an erasure that had been made on the opposite side and written over? A. It does look that way, yes, sir.

Q. Let his Honor see it. A. It has been tampered with, unquestionably.

The Court: It looks to me as if there had been two erasures.

Judge Collins: There undoubtedly has been an erasure here (indicating).

The Court: That is undoubtedly an erasure on that side of the page.

Judge Collins: Well, I thought it showed through.

The Court: It does show through, but is not that an erasure there of $6,000? It looked so to me at first; it may not be, but I think it is; I think it is a better erasure than the other, but it looks to me as if that were an erasure; you can see marks particularly under the two middle o's that were evidently there. There has been an erasure there you can see very plainly, you can see the tracing of the figure, and there is no erasure, you see, on the other side, so that that $6,000 seems to me to have been written over something else, now what it was I do not know.

Q. Well, the long and short of it is, you do not mean to say that there is any erasure on the side of the leaf opposite the $5,000, the date line;

you cannot tell whether there has been or not? A. I cannot tell.

Q. But you do see by looking back on the other side of the leaf that what looks like an erasure may be simply what shows through from that erasure? A. Yes; I cannot tell.

Q. And there seems to be, as the Vice Chancellor says, some erasure under the 6,000 item? A. Yes, there does; the book has been tampered with, that is very evident.

Q. Your bookkeeper I presume is the one who can tell us about the exact status of your account at that period? A. Yes, sir, he can tell you all about it.

Q. When you say that Mr. Smith told you that it looked threatening by reason of the heavy drafts, so that perhaps the cash reserve might be reduced below the legal limit, and you sent up some money; was the money you sent up a regular deposit to your account? A. Oh, yes, sir, always a regular deposit.

Q. You say you borrowed $10,000 at one time; do you mean on collateral? A. No, sir, on promissory note.

Q. An endorsed note? A. An endorsed note, yes, sir, for which I made application in writing, as the law requires.

Q. And it was borrowed on a regular endorsement and paid? A. And paid with interest, yes, sir.

Q. How much of a balance did you keep there generally from the beginning?

Mr. Clark: I have to refer to the Judge's own objection, that the pass book speaks for itself.

The Court: Will not the account show?

Judge Collins: Yes, but it was for the purpose of a generalization of the character of his dealings with the bank. If your Honor thinks we should be limited to the books themselves, why I will do so.

The Court: If you wish to have him state generally.

Q. Generally speaking, your balance? A. I kept a balance from several thousand dollars running up at one time to over forty-two thousand dollars my deposit in the bank was.

Q. At the time the bank failed how much did you have there? A. Around twenty-two or twenty-three hundred dollars.

Mr. Clark: I object to the question, and the objection is of the more importance because the books of the bank show from time to time that Mr. Dunn was overdrawn.

Judge Collins: We cannot help what the books showed.

Mr. Clark: But that is our testimony from this witness.

The Court: I will allow this evidence; it is not worth while to discuss it. There are two methods of proving what a depositor has in the bank; first, by his book, and second, by his recollection. Now in this case the evidence indicates very plainly that the books are wrong, they have been tampered with, and consequently you have to rely more or less upon the recollection of the witness.

Q. What was the balance? A. There was between twenty-two and twenty-three hundred dol-

lars. Mr. Vredenburgh told me that Smith had tampered with my account and had juggled it.

Q. Mr. Vredenburgh is the Bank Examiner? A. Yes.

The Court: That is not evidence.

Q. You say between twenty-two and twenty-three hundred dollars? A. Yes, about that amount.

Q. And you received your dividend on that as the other depositors did? A. Yes.

Q. You also were a stockholder to what extent? A. Ten shares.

Q. And have always been? A. Yes.

Q. That is since you became a director? A. Well, I gave half of it to my wife about three months before the bank closed as a present.

Q. Well, I mean to say— A. But I retained the—

Q. I mean to say that you became a stockholder when you became director, or were you a stockholder before that time? A. Just before that time, about a month.

Q. And then you became a director? A. Yes.

Q. It appears that the Examining Committee for 1912 held another meeting, according to the books of the bank; you were not at that meeting? A. No, sir, I was not.

Q. Why weren't you there? A. I was sick.

Q. Tell us about your sickness.

Mr. Clark: This has been gone into and brought out on direct-examination, that he was ill during that examination.

The Court: Yes, but the purpose of cross-examination is to go over the matters which have been gone over on the direct-examination.

Q. It appears that the minutes show that you were elected January 9, 1912; does that comport with your memory? A. Yes.

Q. And you attended the meetings January, February, March, April, May and June? A. Yes.

Q. Is that the fact? A. Yes, every meeting.

Q. At each meeting? A. Yes.

Q. Now after the June meeting was there a period when no meetings were held during the summer season? A. The directors meetings were suspended until the hot weather was over.

Q. You were never on any committee except this one year examining committee? A. The second year I was appointed on the appraisel committee, but it never had acted up to the time the bank closed, it had never been called together.

Q. The September and the October meeting you attended? A. Yes, sir.

Q. What happened at the November meeting? A. At the November meeting I appeared at the bank at the time the board of directors were to hold their meeting, but the Executive Committee on that date had rather a prolonged meeting and it was rather late when they came out to have the board of directors meeting. I had been suffering for quite some time, I was very ill at the time, and before the meeting was called I asked the president to be excused from that meeting on account of my illness, as it was quite late in the afternoon, and he excused me—that was the November meeting—though I appeared there to act.

Q. And you went away? A. I went away, yes.

Q. And were not present at any part of the meeting? A. No, sir, I was not.

Q. Now after that November meeting did your sickness get worse? A. Yes, sir, it did.

Q. What was the trouble? A. I had nervous prostration.

Q. Did you go away? A. I did, sir.

Q. Where? A. I went to Pinehurst and then to Augusta, south.

Q. In the south? A. Yes.

Q. You were sick for several months? A. I was, yes.

Q. What was the first meeting you attended after that? A. February.

Q. Did you attend the March meeting? A. I did, sir.

Q. And the April meeting? A. Yes, sir.

Q. What rather important event to you occurred in April? A. I was married.

Q. And then what did you do? A. I went on a wedding trip.

Q. Then you missed the May meeting? A. Yes.

Q. And you were at the June and July meeting? A. Yes, sir.

Q. Did you at these meetings you attended give attention to what went on? A. I did, sir.

Q. You have said that you did not read the minutes previous to your election. It has been proved in evidence that along in 1909 some letters were written from the then Banking Commissioner reflecting on Mr. Smith; did you know of those letters or anything in connection with them, or any reflection on Mr. Smith at all, until after the bank closed? A. No, sir, I never did.

Q. Never heard of those letters until after the bank closed? A. Never heard of them until after the bank closed.

Q. What is your age? A. I am thirty-three years old.

Q. Born what date? A. In 1884.

Q. What month and date? A. February 9, 1884.

Judge Collins: I think there is nothing else that I have a right to ask him that is in the nature of cross-examination now, but he may perhaps be recalled.

CROSS-EXAMINATION by Mr. German:

Q. Mr. Dunn, was it never reported to you that Treasurer and Secretary Smith had improperly or negligently performed his duties as such secretary and treasurer? A. No, sir.

Q. Had anything come to your knowledge to awaken any suspicion of the honesty or fidelity of the secretary or treasurer, or of any other officer, committeeman, director or employee? A. No, sir.

Q. Did you ever become acquainted with any fact or circumstance as a director of the Roseville Trust Company or of the Examining Committee which would lead you to believe that any officer, committeeman, director or employee was not performing his or their duty?

Mr. Clark: I object to the question, I do not mind a few of them, but these questions which call for an inference I think are objectionable.

The Court: Well, anything that calls for an inference is objectionable, but anything that calls for notice is unobjectionable.

Q. (Question read.)

The Court: Well, of course there is an inference there. I do not see how you could put the question very differently. I

will allow that question to be answered; I do not think it is of much value myself but still I will allow it to be answered.

A. May I have it read again?

Q. (Question read.) A. I never did.

RE-DIRECT-EXAMINATION.

Q. You have just replied that you knew of no fact or circumstance which would lead you to have any suspicion of any officer or employee? A. Yes, sir.

Q. When you saw this pass book of yours indicating that items had been irregularly inserted or that erasures had been made, or to use your own expression the book had been tampered with, didn't that lead you to any inquiry as to whether or not any officer or employee was guilty of irregularity? A. I never saw that until right now, ten minutes ago.

Q. This is your personal pass book? A. It is the only account I had at the bank.

Q. But it is Edward D. Dunn personally? A. Yes, sir.

Q. And you lived, you say, in the general neighborhood?

The Court: Yes, he said that.

A. Yes, I lived there. I must correct that though, as I notice the dates of those tamperings are dates on which I did not live in the general neighborhood; I lived in New York after I was married.

Q. But this date is 1913, February? A. Yes, I lived there then.

Q. You say that you were told in connection with this shortage of available funds that Mc-

Creery had drawn heavily. Any others? A. I am under the impression that the name of Claflin was also used, I am not sure.

Q. And I do not recall whether you testified any of those occasions was earlier than your examination or not? A. When I examined?

Q. Yes. A. Oh, no, they were about a year after.

Q. You knew that Mr. Odell was connected with Claflin? A. I did, sir.

Q. Did you ask him whether Claflin had been drawing heavily? A. I think so.

Q. After you had been given this information? A. I think so.

Q. He told you what? A. I think he told me they had withdrawn their account.

Q. Can you by this pass book fix the dates when you made these extraordinary deposits?

Judge Collins: I object to the use of the adjective "extraordinary."

Q. Well, out of the usual?

Judge Collins: Or out of the usual either.

The Court: Do not characterize it. It is unnecessary to characterize these things.

Q. Mr. Dunn, you understand that I am referring to the deposits which you made upon the request of Mr. Smith? A. Yes; there are so many more tamperings with this book that really I cannot tell much about it.

Judge Collins: And I submit it is not the best way to find out from this book when he made the deposits; the best way to find that out would be from his own books and not from this. In other words, you are simply having him dignify this

book in its present condition; it may be all right, I do not say it is not.

The Court: Well, cannot we get that information from his bookkeeper?

Mr. Clark: I do not know how; this is the man, and this is his account.

A. I will get the bookkeeper.

The Court: It is perfectly proper for you to ask the question, but when the witness tells you his bookkeeper is familiar with the matter and not himself, why then we naturally go to the bookkeeper.

Q. Did you make any deposits yourself? A. From the time I opened my account on?

Q. Yes. A. Oh, yes, sir; I did not have a bookkeeper the first year or so.

Q. Didn't you make most of the deposits yourself? A. For the first year I did, but after that I do not believe I made any of them.

Q. Did you have anything to do with the delivery of your book for balancing from time to time? A. No, sir, never, not after I got my bookkeeper.

Q. You are unable to state either with or without the book the month in which any of these deposits of the character we have referred to was made? A. Yes, I cannot tell.

CROSS-EXAMINATION by Mr. Whiting:

Q. Mr. Dunn, you, I understand, were a member of the Examining Committee at one time? A. Yes.

Q. And understood that the function of the committee was to examine as to the condition of the Trust Company and report back to the board? A. Yes, sir.

Q. You made such an examination and your report is filed with the minutes, is it not? A. Yes.

Q. Prior to the closing of the institution did you ever learn that your report was in any wise wrong or incorrect? A. Never, no, sir.

Q. Did you ever intimate in any manner whatsoever to the board of directors that your report was not correct? A. No, sir.

HARVEY MOTT, sworn.

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. I haven't any.

Q. What was it in the year 1913 and prior thereto? A. Hadn't any.

Q. Where did you live at that time? A. In 1913?

Q. Yes. A. Twenty Vernon Place, East Orange.

Q. Is that near Roseville? A. About a mile.

Q. Have you ever had any occupation? A. Yes.

Q. What was it when you last had one? A. The only occupation was a jewelry business, my trade is a jeweler.

Q. When were you last actively a jeweler? A. I think I quit sometime around 1890.

Q. Had your own establishment? A. No.

Q. What was your official connection with the Roseville Trust Company, other than a director? A. I was on the appraising committee.

Q. What committee? A. On the appraising committee.

Q. Was that a permanent standing committee, or one that was appointed from time to time? A. I believe a permanent committee.

Q. Were you on the executive committee? A. I think I was from January of the year 1913 until the bank failed, about seven months; I think the minutes show that.

Q. As a member of the executive committee did you receive any reports of the bank's condition from week to week? A. While I was on the—

Q. Executive Committee? A. Well, it was brought before the meeting and was argued pro and con different times.

Q. Did you receive anything in writing? A. I did not.

Q. Is it a fact that typewritten or written reports of the assets and liabilities were presented to the Executive Committee each week by the treasurer? A. Some kind of reports printed were put around on the table, if those are what you mean.

Q. Did you take any home with you? A. I did not.

Q. Did you ever check up the correctness of such report or any part of it by reference to any of the books of the bank? A. I do not recall I did, whether I did or not.

Q. If you had done it you would now recall it, wouldn't you? A. I think so.

Q. If you should be shown copies of any of those reports is your recollection clear enough so that you could identify them now? A. I would like to see them.

Q. While you were a member of the executive committee was the subject ever presented or discussed as to whether or not the available funds of the Trust Company were or were not below fifteen per cent of the amount of the demand liabilities of the institution? A. No.

Q. And while you were a member of the executive committee was it ever the subject of discussion as to whether the cash was below three per cent of the demand liabilities? A. No.

Q. Did you ever inquire while you were a member of the executive committee of any person at all with a view of ascertaining whether or not that condition existed? A. I do not recall.

Q. If you had made such inquiry you would recall it today, would you not?

Mr. Stiefel: I object.

The Court: Yes, I think that is proper; he is testing his memory.

A. I think I would.

Q. You read the letter of the Banking Commissioner of May, 1909 telling about Mr. Smith and his manipulations of the Nones account, did you not? A. I did not.

The Court: Well, the evidence is that it was read, and not that each director read it.

Q. Did you hear it read? A. I think I did.

Q. And you heard read the portion of that report which referred to loans having been made unbeknown to the directors, did you not? A. I heard all that was in that letter read.

Q. Now from that time on was it ever the subject of discussion at any directors' meeting or any meeting of the executive committee as to

whether or not Mr. Smith was repeating the offence of loaning money without the authorization of the directors? A. Never.

Q. Do you know whether the executive committee at any time made any inquiry or investigation to find out whether such offence was being repeated?

Mr. Whiting: Won't you confine yourself to the time; from January, 1913?

Q. No.

The Court: Well that question is not proper unless it is confined to that time.

Q. While you were a member of the executive committee did the committee so far as you know ever make any inquiry or investigation to find out whether Mr. Smith was loaning without the knowledge of the board or the committee? A. I cannot recall that.

Q. Did you ever look in the general ledger of the institution? A. I did not.

Q. Did you ever look in any book of the bank? A. No, I do not think I did.

Q. Or any of its records, other than the typewritten reports Mr. Smith gave you? A. No, I did not.

Q. Did you have any knowledge whatsoever of what the condition of the Trust Company was, other than what was told you by Mr. Smith or contained in a statement prepared by him? A. Well, at every monthly meeting was different things brought up about the bank, and everything seemed to be prosperous and in fact we used to make inquiries about it.

Q. But your knowledge of whether or not those facts as reported were true was gained entirely from Mr. Smith or his reports, is not that so?

Mr. Stiefel: Here is the same objection I made a few days before. The question in its form is essentially objectionable, and while your Honor, I know, will in deciding this case pass by the objectionable features, still we have a record, and we must consider the record. This witness has testified he was a member of the executive committee; he went to the meeting, he went to the board meetings, and from that he must have learned a mass of facts with regard to the condition of the affairs of the bank. Now that is entirely eliminated from that question. When you ask a hypothetical question you should put in all the features; aside from the reports, and aside from your actual practical experience, did you.

Q. (Question read.)

The Court: I think that question is objectionable. This is direct evidence, and the witness should be examined in accordance with the rules of evidence; there is nothing to indicate that he should be otherwise examined.

Q. I will withdraw that question. Did you have any knowledge—

The Court: What source of information did you have, other than that derived from Mr. Smith's statements, verbal or written?

Q. I will ask that question just as your Honor has put it. A. Well, the president, Mr. Odell, and vice-president, and so on, talked at the meetings of the different business, that the bank seemed to be prosperous, and I didn't have any suspicion it wasn't any other way.

Q. Did the Trust Company while you were a director or a member of the executive committee to your knowledge ever hire any expert accountants to look at the condition of the bank? A. That I do not recall.

Q. Do you know who kept the general ledger of the bank? A. Well, as I understand it different ones did at the time.

Q. Did you know at the time, or have you learned since who kept the general ledger? A. Well, I have learned more since than I did before.

Q. At the time you were a member of the executive committee you didn't know who did keep the general ledger, did you? A. Well, then Mr. Smith used to keep the ledger before, but the last seven months it was done by someone else.

Q. How did you know that? A. Well, they had bookkeepers.

Q. Who told you? A. Well, the general conversation I used to hear.

Q. At the executive committee? A. At the meetings.

Q. And what bookkeeper was it that you had heard at the meetings was keeping the general ledger while you were on the executive committee? A. I think that was Mr. Mindnich.

Q. Mr. Mindnich never told you he kept the general ledger at that time, did he? A. Well, I knew he was the bookkeeper.

Q. Did he tell you he kept the general ledger? A. I cannot recall whether he told me.

Q. Did Mr. Smith tell you Mr. Mindnich kept the general ledger at that time? A. I do not recall that.

Q. You cannot recall who did tell you? A.

No, but I was under the impression Mr. Mindnich kept that ledger.

Q. But you cannot recall who did tell you? A. No.

Q. Did it ever come to your attention while you were a member of the executive committee that there was an insufficient amount of funds for the operation of the Trust Company? A. Only in the way that money was—men had borrowed on the commercial paper, on notes, wanted some accommodations, and the bank was short of funds, in that way it didn't have the amount of money they wanted to accommodate their customers.

Q. When did you first hear that there was such shortage? A. Well, that is probably in 1912, possibly; it wasn't before that.

Q. Latter part or early? A. I couldn't tell.

Q. Did you ever hear any other explanation of such shortage existing, other than there had been an annual amount of customers accommodated with loans? A. With heavy withdrawals, that is the only way I found it, and as I heard the evidence here before.

Q. Did you hear whose withdrawals they were? A. I remember two distinctly were heavy.

Q. Which were those two? A. Well, the firm of Claflin and McCreery.

Q. Did you hear anything about the amount of the heavy Claflin withdrawal? A. Well, the exact amount I couldn't say but they were large amounts.

Q. Was it as much as $200,000? A. No, I don't think so.

Q. As much as $100,000? A. There were times when it was very high, I remember the president talking about it.

Q. Was it as much as $100,000? A. It was a large amount, I wouldn't want to say.

Q. Was this in the early part of 1913? A. When they had so much—

Q. When Claflin withdrew so much that it caused a shortage? A. I couldn't tell, it was in the latter part of 1912 or 1913.

Q. It was while you were a member of the executive committee? A. I wouldn't say as to that either.

Q. Do you know whether the accommodations that you speak of to borrowers which had helped to produce this shortage were all loans that had been authorized by the directors or the executive committee? A. As far as I knew.

Q. Did you make any inquiry to find out? A. I do not recall that I did, I haven't any reason to.

Q. From time to time you signed reports to the Banking Department, did you not? A. Signed a report?

Q. Signed reports of the Trust Company's condition, as called for by the Banking Department? A. I do not remember that I signed any reports, any more than attesting the signature.

Q. Well, you knew, did you not, while you were a member of the executive—

The Court: Show him the report.

Mr. Hinds: There is a question I want to bring out before he sees it.

The Court: The trouble about it is you are constantly, and naturally perhaps, falling into the idea that you are cross-examining the witness.

Q. I show you what purports to be a report, and ask you if you find your signature thereon? A. I do right there, that is my signature there (indicating).

Q. And in affixing your signature to that report you did not intend to convey the idea that the report was correct; is that your answer?

Mr. Stiefel: I object.

The Court: Oh, no, he can be asked why he signed.

Q. Why did you sign the report? A. Well, I remember coming in the bank, I was in the bank a great deal, and Mr. Smith asked me to sign this report, he said he had to hurry it down to Trenton, and I signed the report.

Q. Now I notice the word—

Mr. Stiefel: May I call the Court's attention to this. The signature provides that such report shall be rendered to the Department sworn to by one officer, signed by another, and attested by the signatures of three directors.

The Court: Well, that is a matter of argument.

Q. I observe over your signature the words "Correct Attest." When you signed that report did you see these two words there above the blank for your signature? A. I presume I saw it all.

Q. And in signing that what interpretation did you put—

The Court: Oh, no.

Mr. Hinds: This is a defendant himself, and his state of mind.

The Court: No, I will not allow that question.

Q. What did you understand—

The Court: No, not what he understood; what he did; you can ask him what he did with a view of verifying what he stated to be correct.

Mr. Hinds: I ask an exception on the ground that his state of mind is relevant to the issue.

Q. Having signed your name on this report did you make any inquiry as to the correctness of the figures stated therein, or did you do so before signing the report? A. I asked if this was all right, and the other signatures were there, and I signed my name.

Q. Who did you ask? A. Mr. Smith.

Q. You did not make any other investigation as to the correctness? A. I did not.

Mr. German: What is the date of that report?

Mr. Hinds: I offer the report in evidence. It is verified February 4, 1913 by William P. Odell and Raymond E. Smith.

Marked Exhibit C-104.

Q. Now I observe attached to this report what purports to be an advertisement in the Newark Sunday Call, also bearing your name; can you identify that as having been a published copy of the report and of your name thereon? A. I do not remember ever seeing that before.

The Court: I will assume that everything on that paper was seen and approved by the witness.

Mr. Hinds: I offer in evidence also the proof of publication of the report in the papers.

The Court: Yes, I assume it is all one paper.

Mr. Clark: In justice to that defendant I want to point out that the proof of publication is a later step, that is, not on the instant when he signed it.

The Court: Passed on afterwards.

Mr. Hinds: I offer that in evidence as a public record of a step required by statute.

Marked Exhibit C-105.

Q. I show you what purports to be report dated April 12, 1913, and ask you if you find your signature under the words "Correct Attest" on that report? A. I do.

Q. Did you make any inquiry other than of Mr. Smith as to the correctness of the figures contained thereon? A. No.

Mr. Hinds: I offer that in evidence, and also the attached publication.

Marked Exhibit C-106.

Q. Did you read this report before you put your signature on it, either one of the reports that are in evidence? A. I casually looked it over, and I saw Mr. Fairlie and the other parties on there and I signed with them; he seemed to be in a hurry and wanted to get it away, and I happened to be the last one to come in; I think it was two, all I signed.

Q. You signed other reports previous to this, did you not? A. I don't remember signing any more than two, I may have.

Q. Now I show you what purports to be a statement of resources and liabilities, and ask you if you can identify that as a copy of one of the reports that was handed to the executive

committee? A. I wouldn't want to say those are the ones, they are similar to the ones that we used in the bank.

Mr. Hinds: May I have this marked for identification so as to show it is the one the witness referred to?

Marked C-107 for identification.

Q. Following the Nones transaction, as stated in the Commissioner's letter, was any enquiry made by the board of directors or by any member of it so far as you know with a view of learning whether Mr. Smith was continuing the offence of drawing drafts without entering the amount upon the stub of the draft book? A. I heard Mr. Odell speak something about it, from the letters coming from the Department of Banking.

Q. What did he say? A. He said something about the checks should be pasted on the stubs, or something.

Q. What I am asking you is whether after that you heard anything said in any meeting of the directors or executive committee as to verifying the fact that Mr. Smith was not repeating the offence from time to time? A. I never heard anything, that he was repeating those offences.

Q. But you never heard the matter discussed as to taking any measures later to see that he did not repeat that offence? A. I think we always took measures; those letters came to the bank and we attended strictly to those things and had them acknowledged.

Q. You mean that letters came from the Department calling attention to further offences of that kind? A. No, I do not, only in a casual way of the general business; maybe an insurance poli-

cy wasn't marked right, or something, or something in some clerical matters.

Q. I am asking you simply about the one offence of drawing drafts on the Trust Company's accounts with other banks and not having any record of it? A. Never heard anything of it.

Q. Did you ever hear the subject discussed as to preventing that from happening again after the original discussion at the original incident? A. I do not think that ever came up, where there was any discussion about the thing, because they never had any occasion to I don't think.

Q. Did you ever dabble in real estate, Mr. Mott?

Mr. Whiting: I do not think that is proper.

The Court: I do not think the question is a proper one.

Q. Were you ever engaged in any ventures or enterprise respecting real estate, dealing in real estate? A. Never was.

Q. As a member of the executive committee from time to time you were called upon to consider the financial standing of proposed borrowers, were you not? A. Why, yes, lots of times.

Q. The International Tobacco Company was one of the borrowers whose credit was considered by your committee, was it not? A. No, not by the committee I was on.

Q. You were a member during the last year, at least, of the institution's existence? A. Last seven months.

Mr. Whiting: I object to that. The evidence is that he was a member the last seven months.

Mr. Clark: The last calendar year.

Mr. Whiting: Well, let us get this accurate. I object to the statement that he was a member the last calendar year.

Q. When were you elected a member of the executive committee? A. In I think it was January first, somewhere thereabouts, 1913.

Q. And for what term? A. For that year I presume.

Q. Can you recall any of the important borrowers of the institution whose credit was considered at any meeting of the executive committee which you attended? A. No, I do not, I do not recall any.

Q. Do you not recall Mr. Scarlett's borrowings? A. He never borrowed any there at that time, to my knowledge.

Q. Was his credit the subject of discussion at any meeting of the executive committee which you attended? A. Lots of times.

The Court: Did he borrow during the last six or seven months?

Q. Did he borrow during the last seven months? A. Not to my knowledge.

Q. What was the aspect of his credit which was discussed then at that time? A. Well, Mr. Scarlett was a director of the bank and so was I; first off, why Mr. Scarlett's reputation in finances was in very good standing.

Mr. Hinds: I object to that as not responsive, unless it was discussed.

The Court: Well, he is going on to tell what the discussion was during the time he was a member of the executive committee, and this is a preliminary remark.

A. This was when the bank was first started, and at that time Mr. Scarlett's reputation financially was very good.

By the Court: Q. Your attention is directed to Mr. Scarlett's reputation while you were a member of the executive committee; you say that was discussed? A. Yes.

By the Court: Q. Counsel wants to know what the discussion was? A. At that time of course the bank wanted some money, and he owed the bank some money on a note, I think $10,000, and of course they asked for statements, and they did get statements, but Mr. Scarlett didn't seem, he couldn't do anything on the note.

Q. Did you say they received statements from him? A. I think they got statements.

Q. Did you see the statements? A. I think the statements were read, or Mr. Odell spoke to Mr. Smith about getting a statement, and Mr. Smith had hard work getting a statement, I don't know for what reason.

Q. But a statement was gotten finally, was it? A. I think so, yes.

Q. Did you see the statement? A. I do not remember seeing it, but it was read in the meeting, I think it is referred to in the minutes.

Q. Did you make any investigation yourself as to the correctness of what was in that statement? A. Well, not personally any more than the board.

Q. Did you hear at the executive committee that anyone connected with the Trust Company had checked up the correctness of that statement? A. This was a statement made about his real estate holdings and so on in Greylock Manor, and so on; anything outside of that there wasn't anything mentioned.

Q. Did you hear anyone say in the executive committee that the statement had been checked up and found to state correctly what his real estate holdings were? A. It was said his statement was a good statement.

Q. Who had checked it up? A. I do not know who checked it up.

Q. By good statement do you mean that it was good if true, or that it was true? A. Yes.

Q. Well, now, was there anything said at all, or was it a matter of discussion at all, whether the statement was true? A. No, I won't say that.

Q. And so far as you know it was accepted without investigation by the executive committee as being a true statement? A. That is as far as I know.

Q. While you were a member of the executive committee were any loans approved to one Morel, Charles A. Morel? A. That I do not recall, it seems to me there was a mortgage or something given as collateral to a note they wanted money on; if that was a new loan, I don't know whether that was a new loan or not; he owed money then at that time.

Q. While you were a member of the executive committee can you recall from what you heard at the committee and what you did, what investigation was made as to Mr. Morel's credit, if any? A. Well, I didn't make any regular investigation; I didn't think his line warranted as much money as that and I protested against it in a way.

Q. Did you cause your protest to be regularly put upon the minutes? A. No, I don't think I did.

Q. When did you make this protest? A. I made it in probably 1912.

Q. And in what form did you make it? A. I simply spoke to Mr. Smith a number of times about it.

Q. At the executive committee meetings?

Mr. Stiefel: Nineteen twelve he said.

Q. This was before you were a member of the executive committee? A. Yes, in the meetings.

Q. Did you make your protest at any meeting of the board of directors in a formal manner? A. In a formal way.

Q. You cannot tell us about what date it was in 1912, can you? A. No.

Q. Respecting this protest that you made of Mr. Morel's line, do you recall whether anyone joined you in that protest? A. No.

Q. You were the only protestant, were you?

Mr. Stiefel: He answered that he could not recall.

A. I only remember myself.

Q. Did you ask for an aye and nay vote? A. No.

Q. You were out voted, were you? A. It wasn't voted on, simply an open discussion.

Q. Was the credit allowed? A. Didn't get any more than he had; he had a line of $12,000 I understood.

Q. What was the reason for believing that his line was too high? A. Well, I know he was purely a speculative builder, and I knew he had taken over real estate in Newark which was a lot of money, the Telephone building, and for that reason why I didn't think he ought to borrow so much money.

Q. Had you any familiarity with real estate matters? A. Oh, somewhat.

Q. How had you acquired that familiarity? A. Oh, general knowledge of looking after some properties that Mrs. Mott was building.

Q. Then you have been interested in real estate?

The Court: Well, I do not think it is worth while to go into that; the witness is telling you what he did.

Q. Where did you acquire this knowledge of Mr. Morel's ventures in real estate which you disapproved of?

The Court: Is this one of the items of loss?

Mr. Hinds: Yes.

The Court: What loss resulted from the loan to him?

Mr. Hinds: Several thousand dollars.

Mr. Clark: Mr. Morel went into bankruptcy and paid nothing to his creditors.

A. I knew Mr. Morel personally very well.

Q. Did you know at the time he originally applied for a loan at the bank that he was to do so? A. No.

Q. When did you first know that money had been loaned to Mr. Morel? A. Why soon after the bank was opened.

Q. At that time did you know of his real estate matters? A. No; then he was very good.

Q. While you were a member of the executive committee was the line of the Intercity Land and Securities Company considered? A. It was not, never heard of it.

Q. You are quite sure of that? A. I am quite sure.

Q. While you were a member of the executive

committee was the line of D. C. Newell considered? A. No.

Q. You are quite sure of that? A. Quite sure.

Q. Have you ever heard the name D. C. Newell as a borrower? A. Not until after the bank failed, to my knowledge.

Q. W. C. Armstrong? A. I knew him very well.

Q. Was his line of credit discussed by executive committees while you were a member? A. No.

The Court: I suppose you are confining yourself to those cases in which there was an actual loss?

Mr. Hinds: Yes, and which we pleaded.

A. No.

Q. You are quite sure that this was not discussed while you were a member of the executive committee? A. Never heard of it

Q. Fisk Real Estate Exchange? A. I remember that.

Q. What do you know about his credit, as it come up in the executive committee, F. N. Fisk or Fisk Real Estate Exchange; you can include them both in your answer? A. Yes, I knew the people; it was good we thought.

Q. Where did you get the information on which you say it was good? A. Why he was a large, did a very large business in real estate, selling real estate and commission broker.

Q. Did you make any inquiry to find whether or not he was over extended in this large business?

Mr. Stiefel: He said as a broker.

A. He was simply a broker, real estate broker.

Q. Oh, I thought you said a dealer. A. No.

Q. Did you get a statement from him? A I cannot recall that.

Q. There were a great many instances where your executive committee did not require statements, were there not? A. In some instances I presume there were.

Q. Many instances, weren't there? A. I couldn't tell how many.

Q. Do you remember ever protesting that a statement had not been procured in the instance of any loan which was approved by the Executive Committee while you were a member? A. I do not recall exactly.

Q. If you had made such protest you would recall it now would you not? A. I have made protests but I cannot recall just one, unless it was brought to my attention.

Q. Was such protest ever made because of the failure to have a statement submitted? A. I don't think so.

Q. Do you recall whether any of the members of the Executive Committee at any meeting you attended ever made a protest against a loan because a statement had not been submitted? A. I think I have heard such, I think I have heard that.

Q. You did not join in the protest though? A. Why we used to talk about so many things why probably I did.

Q. Now about Miele & Bruno, was their paper ever discussed by your executive committee while you were on it? A. No, not on the executive committee.

Q. Was it brought to the attention of the board of directors? A. It was.

Q. When? A. Maybe 1910, I don't know, I

wouldn't be sure what year. The minutes will tell that.

Q. By whom? A. Mr. Smith.

Q. What did he say? A Well, he said they were people doing a contracting business in Baltimore, a large business.

Q. And did he recommend that credit be extended to them? A. Yes.

Q. And did you extend it to them? A. We did not.

Q. What took place after his recommendation? A. It was turned down by the full board.

Q. And thereafter to your knowledge was the money ever loaned or credit extended to Miele & Bruno? A. Not to my knowledge.

Q. And from that time on the question of their credit or their applications for loans or question of whether or not they should be loaned money was never discussed by either the board or executive committee? A. Never discussed to my knowledge.

Q. You are quite sure of that? A. I am very sure.

Q. Do you recall any objection by the Banking Department as to Miele & Bruno's credit and loans? A. I think I do, one small loan that they had made; that was in the early part of the bank's opening.

Q. Wasn't that after your board had turned down Mr. Smith's recommendation, as you say? A. I don't think so.

Q. How much was the loan, as you recall it? A. They had a small loan, I forget just what it was.

Q. By small do you mean $50 or $5,000? A.

Well, it may be $1,000 or so; I wouldn't call that a large loan.

Q. Did you know that that loan was to be granted at the time it was to be granted, or did you learn of it after? A. Why, I learned of it after; it wasn't granted to my knowledge, but it was done with the Finance Committee of course at that time; I don't know who they were.

Q. Well, can you tell us what was said in the board of directors' meeting when Mr. Smith's recommendation for Miele & Bruno's loan was turned down, as to the reasons for turning it down? A. Well, there was quite a lot of discussion pro and con about it, and it took a large amount of money, well, I don't know how much, fifty or sixty thousand dollars, and the board didn't seem to want to go in and finance them in some way.

Q. How much money was involved, twenty-five thousand? A. Oh, there would have been a great deal more than that.

Q. As far as you know Miele & Bruno never did have a loan in the institution over $1,000 or so? A. I wouldn't say; there was a small loan but I wouldn't say how much.

Q. It wasn't over three or four thousand dollars? A. Possibly around there.

Q. Not over $5,000? A. I do not recall how much, I couldn't say.

Q. Did the name of Jane A. Curtis ever come up in any meeting of your executive committee as a borrower or endorser? A. Well, in the executive committee—I do not seem to recall that.

Q. In the board of directors? A. I don't recall, only I have heard about it after the bank

failed, there was a note there and I heard a lot about Curtis, but before I didn't know; I do not recall that.

The Court: That is a matter of no consequence.

Q. Was your attention ever directed to Jane A. Curtis paper by any communication of the Banking Department addressed to the Board of Directors or to the Trust Company? A. I do not recall.

Q. Did you know Jane A. Curtis? A. I did not.

Q. Was Mr. Worthington H. Ingersoll's paper ever discussed by your executive committee? A. Not to my knowledge.

Q. He was a director, was he not? A. Yes.

Q. Was it ever discussed while you were a member of the board as such? A. I think so.

Q. Was that at the time he originally applied for his loan? A. I think so.

Q. Was it granted? A. I cannot recall the circumstances, whether it was or not; it seems to me he did get a loan there.

Q. Do you recall whether the board required a statement from him of his condition? A. Well, that would not come before the regular directors; that would go in on the Finance Committee you see.

Q. As far as you know you never knew a statement had been procured from him? A. I think there was a statement, was told to get a statement, or something.

Q. Did you see the statement? A. No.

Q. Or ask to see it? A. No, I do not recall that.

Q. Now what was the main subject of the business of the executive committee at each of its meetings, while you were a member? A. Well, we would take up any transaction about the business of the bank, as far as loans, and paying off on their notes, commercial paper, etc.

Q. Well, a large number of applications for loans were considered at each meeting, were they not? A. No, there weren't so many.

Q. A large number of loans were submitted for approval, were they not, at each meeting of the executive committee, thirty or forty or more? A. No, I don't remember forty at that time at all, not while I was on there.

Q. When you did act upon a matter of loan when you were a member of the executive committee, did you act upon a loan which had already been made by somebody, and your action consisted of an approval, or was the question of the loan brought up to you before it was made, which? A. Sometimes Mr. Smith would speak to me about a loan, whether the party was good or bad, and I would look them up and I would report to him.

Q. At the executive committee? A. Meetings; I don't think there was any regular investigation made by me personally.

Q. When the committee met and considered loans, did they consider loans which had already been made by someone, say Mr. Smith, and either withhold their approval or give their approval, or did they consider loans which had not yet been made and which they were asked to consent to? A. I don't remember anything like that; sometimes Mr. Smith would say a loan was all right, approve a loan, and they would make the loan.

Q. You did consider loans at the executive committee meetings? A. Yes.

Q. Were those loans which had already been made, or loans which you were asked to consent should be made in the future? A. Loans which were already made, sometimes by Mr. Smith.

Q. Wasn't that the usual case? A. Not always, no.

Q. Wasn't it the usual case? A. Not in all matters.

Q. Well, the majority of cases?

The Court: As you understood, did Mr. Smith have independent authority to make loans in advance of their being communicated to the committee.

A. He did.

By the Court: Q. Or was it your practice to approve the loans yourself? A. He could make loans up to the extent of $1,000.

By the Court: Q. Up to the extent of $1,000? A. Without coming before the board, and beyond that he had to come before the board.

By the Court: Q. He had no authority beyond that? A. No.

Q. As to the loans he made below $1,000, was he required by the practice of your executive committee and Trust Company to get your approval afterwards, or was that simply a finished transaction after he had made a loan under $1,000? A. That was supposed to be finished, as I understood it.

Q. And as to those over $1,000, according to the practice of the Trust Company was he to get the approval of the executive committee before he made the loan? A. Before the loan was made he got it.

Q. I show you the minutes of February 19, 1913, and call your attention to the following: "Bills purchased during the week were approved as follows," and you observe then a long list of at least forty loans. Do you find any in there of over $1,000? A. Yes.

Q. W. H. Ingersoll $1,075. M. Loprete $2,500? A. Yes

Q. Two Morel loans of $1,000 each. Orange Supply Company $1,216.87. D. Purpure $1,000?

Q. Now Mr. Mott, you were present at that meeting, were you not? A. I attended the meetings regularly.

Q. Is it not a fact that at least at that meeting the loans, and many of them over a thousand dollars, had already been made before it was a matter to be considered by your committee at all; is not that a fact? A. I cannot say. Those loans were made before I was on the Finance Committee.

Q. The minutes of each meeting of the executive committee were read and approved at the following meeting, were they not? A. Yes.

Q. And that was the invariable practice of the executive committee? A. The following meeting.

Q. And then the meetings of all the executive committees in a given month were read and approved by the board of directors at the directors' meeting? A. Usually, yes.

Q. And that was invariable, was it not? A. Yes.

Q. And then the meetings of the board of directors, those were read and approved at the subsequent meeting of the directors, is not that a fact? A. I think so.

Q. And they were read out of this very book, were they not? A. Well, it looks like the minute book.

Q. It had numbered pages up in the corner, did it not, and that sort of paper? A. Mr. Smith had that book, I didn't have it; I didn't read through that book but it looks like the minute book.

Q. Was it locked when he brought it in? A. I don't know whether it was what you call locked or not, but it had some kind of catch you put on it.

Q. Turn to the next meeting, February twenty-fifth; you were there, were you not? A. I attended about all the meetings, I presume I was there.

Q. Practically all the meetings of the executive committee? A. I would say so.

Q. Now refresn your recollection from the minutes of that meeting and tell me whether there was not a number of loans as high as a thousand dollars and some probably higher that had already been made before you considered the advisability of making them or not?

The Court: Let me ask you a question before you answer that. The statement contained in the minutes is as follows: "Bills purchased during the week." Now bills purchased meant what, according to your use of that term? A. Someone would come in and borrow money on a note, and ask us if we would purchase that paper.

By the Court: Q. And wherever the words "Bills purchased" occurs, what is meant is that the company made a loan to the person whose name is mentioned. It does not mean that the

company went into the market and bought commercial paper, or anything of that sort? A. No. Now I will explain. Lots of these people here are people that I know personally; they had made these loans long before I was on the Finance Committee, and these payments weren't made and these were renewals, but still they would go on the same as a new loan.

Q. But there is nothing on there to indicate they are renewals? A. No, but lots of them are renewals.

Q. How about the Federal Guarantee Company, with the endorsement of H. H. Coleman $3,000; is that a renewal? A. That I cannot say, I cannot say which were renewals, but there were lots of them renewals.

Q. Just turn over a few pages of those minutes and tell me if it is not a fact that the usual practice in your institution was that Mr. Smith loaned the money first, while you were a member of the executive committee, that Mr. Smith first loaned the money, whether it was under a thousand dollars or over a thousand dollars, and then after he done it you people simply approved his act or disapproved it?

Mr. Stiefel: If he knows.

A. I don't know anything about it.

Q. Did you ever disapprove a loan he had already made, while you were a member of the committee? A. In what way?

Q. By indicating your disapproval of it on the minutes? A. No.

Q. Did you ever disapprove a loan he had already made and it did not go on the minutes? A. Did not go on the minutes? I don't know of any didn't go on the minutes.

Q. Then you did not disapprove any at all, did you? A. Yes, I did.

Q. Did it ever occur while you were a member of the executive committee that a loan over $1,000, not a renewal, which had been made by Mr. Smith was disapproved by your committee?

The Court: That assumes directly contrary to the evidence of the witness that Mr. Smith had made loans over $1,000. I overrule the question.

Q. Did Mr. Smith ever make loans to your knowledge over $1,000 before getting the approval of the committee, which were not renewals? A. If you tell me what instance you are speaking of I will answer it.

Q. Do you know of any such instance? A. It has been said that he did.

Q. On those occasions did you ever disapprove—

The Court: Oh, no, no. The witness is now speaking, or may now be speaking from what he has learned since this institution failed. The question is not a fair one, it is misleading.

Q. While you were a member of the committee was a loan ever presented for the consideration of your committee which was over $1,000, and had already been made by Mr. Smith without previous authorization, and which was not a renewal? A. I do not recall any such thing.

Q. Do you recall the loan of A. C. Windsor of $15,000, which was submitted to your committee at its meeting on March 4, 1913?

Mr. Whiting: That assumes it was submitted.

Q. Which appears by the minutes to have been submitted?

Mr. Whiting: I would not object to the word "appears."

A. I remember the loan very well.

Q. Is that a renewal? A. Well, I don't know whether that loan was made before, but I remember of the loan being made to Mr. Windsor.

Q. Well, on the occasion when it was made had it already been made before it was formally acted upon by your executive committee? A. Not to my knowledge.

By the Court: Q. Could it have been made by Mr. Smith without the consent of the executive committee?

Mr. Hinds: Without the previous consent.

A. I couldn't say to that, I do not recall.

Mr. Whiting: Won't it save time if he gives his explanation as to the Windsor note now?

Mr. Hinds: I merely took it because it happened to be on the page, that is all.

Q. Do you recall ever having disapproved a loan recommended by Mr. Smith at any meeting of the executive committee? A. I presume there were loans.

Q. Do you recall ever having done so? A. I do not recall any particular loan, but I do recall loans.

Q. You do recall there were loans disapproved? A. Sometimes he would come in and we would say we didn't think we were justified in loaning it.

Q. And in those instances— A. There is one right here now.

Q. In those instances had the loan already been made by him? A. No, there were some new people wanted money.

Q. And he came to you before loaning it and asked for approval? A. Came before the board.

Q. You do not recall what ones they were? A. That is too long ago now, I do not.

Q. Do you recall whether that disapproval got on the minutes? A. No, it did not; it wasn't necessary, was it; didn't loan the man any money.

Q. I am asking you whether it got on or not? A. No, I do not think so.

Q. As far as you know, it was your practice when the loans were disapproved not to put them on the minutes at all but only to put on the loans that were approved; is that right? A. No, I think there was—of course they were put on when they were approved, but I do not recall whether they were put on when they came up before the meeting and was disapproved or not. I presume there were instances that there were loans put on that way, I do not recall those things.

CROSS-EXAMINATION by Mr. Whiting:

Q. When did you become a member of the board of directors? A. Since the bank was instituted.

Q. And you attended the meetings of the board regularly? A. Very.

Q. How often were those meetings? A. Regular meetings once a month, regular board meetings.

Q. Were you a banker prior to your becoming a director? A. No.

Q. You never heard of anything wrong at the

bank, in the way of dishonesty by its officials or employees prior to the closing of the bank, did you, with the exception of the Commissioner's letter which has been referred to? A. I did not.

Q. Was there any method employed in the bank while you were a member of the board to keep track of the affairs of the bank to see that things were all right? A. Why, yes.

Q. How did you do that? A. Why I didn't do it personally.

Q. How was it done A. Well, the president used to be at the bank mornings and the vice-president would be there, and I think the second vice-president, and they would report to the meetings what went on, and I used to go in the bank about every day, and I would always speak to the clerks "Well, how are you getting along" or Mr. Smith, and so on, that way, and they said everything was going, and the bank seemed to be very prosperous, the business that was done there.

Q. Was any examination of the affairs of the bank made there from time to time? A. At times, yes.

Q. How was that done, who did it?

The Court: Do you want to show anything in addition to what has previously been shown? It is not worth while to prove a fact which is undisputed twice. Now we have had a statement of what was done by the examining committee and what was done by the president and what was done by other officers. If you want to add anything to that of course that is proper, but it is not worth while to go over the same ground. Whatever is not dis-

proved I will assume to have been proved by the testimony of a single witness.

Q. You have heard the testimony with respect to examinations made by the Examining Committee? A. Yes.

Q. Do you recall that they made reports after their examinations? A. I do.

Q. I will ask you whether or not you relied upon their reports as true?

Mr. Hinds: Objected to as calling for a condition of the witness's mind in his own favor, when we have not been permitted to bring it out against him.

The Court: No, I understand that question to relate to the action of the board. This is not a criminal proceeding; the thoughts of the witness are immaterial. The question of negligence has to be determined by what they did or failed to do.

Mr. Whiting: Is the question overruled?

The Court: I assume that that question relates to the attitude of the board toward the reports. If it does not why then I will overrule it.

Q. I will ask it with that shade of meaning which your Honor has implied. A. I did.

Q. I understood you to have testified that you did some appraising for the bank? A. I did.

Q. Was that while you were a member of the executive committee or before that, or during the entire period, off and on. A. Entire period.

The Court: I would like to ask whether there will be any contention that the company lost money through the failure of the appraisal committee to appraise property?

Mr. Clark: So far as it relates to its specific duties of appraising mortgages, no. The only connection that this man's business would have with his possible liability here in another capacity would be, if he was familiar with real estate a little different duty would be cast upon him with regard to the financial condition of borrowers whose chief property was real estate than would be cast upon a shoe manufacturer, for instance.

The Court: If there is going to be no claim of liability founded on improper appraisels I do not think it is worth while to go into that. I am speaking of appraisals of property.

Mr. Clark: But your Honor, that has this two-fold meaning in this case, that the appraisal committee was appointed primarily for the purpose of appraising property on which they made loans on mortgage. Now there is no claim for loss, but this appraisal committee also acted in connection—although perhaps informally—with loans to persons who owned real estate on straight note.

The Court: Well, if there is any claim for loss arising from that then it is a proper subject of cross-examination.

Mr. Whiting: I am not just clear how the record stands. I am ready to produce testimony to prove that no losses were incurred upon properties appraised by this particular defendant, and if it is in the record that there is no claim I will not of

course burden the Court with that proof. I understand that it is so conceded by counsel for the complainant?

Mr. Clark: I have stated exactly what the position is, and it is on the record. So far as agreeing to any summarization by you that is not necessary; I have stated it in detail.

The Court: You need not go into the subject of the appraisal of real estate; it is conceded that no loss was occasioned by lack of proper appraisal. Now anything else you must of course examine about.

Q. Your attention was directed to a loan of something like fifteen thousand dollars referred to, as I understand, as the Windsor note? A. Windsor?

Q. Do you know whether that note was paid? A. I think it was paid.

Q. State the facts and circumstances with regard to the making of that loan, as you recall them.

The Court: You say it was paid or unpaid?

A. I think it was paid.

The Court: If it was paid then no loss was occasioned.

Mr. Hinds: I mentioned it in connection with the occurrence of the executive committee's operation, which I claim was a negligent occurrence in that they habitually permitted loans to be made without approval, and this happened to be on the page I had opened, that is the only reason I mentioned it; you will find it on every page.

A. The loan was made with approval.

The Court: I understand that you are endeavoring to show that in that particular instance the loan had been made by Mr. Smith before the committee approved it. The witness stated just the contrary; he stated that as far as he knew the loans exceeding $1,000 were brought before the committee and approved by them before the money was lent. You need not go into that because there is no loss.

Q. Your attention was directed to loans made to W. C. Armstrong; were any loans made to W. C. Armstrong while you were on the executive committee? A. No, not to my knowledge.

Q. The loans which were made to W. C. Armstrong had been made before they were reported to the board, were they not, the general meeting of the board? A. That is the way I understand it.

Q. That is the way it was done? A. That is the way it was done.

Q. In other words the small loans were made by Smith directly, the larger ones by the executive committee? A. There wasn't any loans made to Mr. Armstrong by the executive committee, as I understand it but one loan.

The Court: The witness, as I understand it, says they were not made during his time. Is that so?

A. There was no loan made—there was one loan made but not while I was on the executive committee.

Q. Your attention was directed to loans made to the Intercity Land and Securities Company?

A. There weren't any loans made to the Intercity to my knowledge.

Q. Since the closing of the institution's doors it has come to your knowledge that that concern obtained large amounts of money from the Roseville Trust Company? A. It did.

Q. You never heard of that until the doors were closed, and afterwards? A. Never.

Q. Since the doors were closed haven't you learned of large sums obtained by Miele & Bruno? A. I have.

Q. Did you know that such loans had been obtained during your encumbency of the office of director? A. It didn't come to my knowledge while I was a director.

Q. Did that come while you were a member of the executive committee? A. No.

Q. In other words, they had been made before you knew of it? A. Made before I knew of it.

Q. Mention has been made of the credit obtained by Mr. Morel; was that while you were a member of the executive committee? A. No.

Q. The same of the loans obtained by Mr. Scarlett? A. No.

Q. By that you mean it was not obtained while you were a member of the executive committee? A. Yes.

Q. And D. C. Newell? A. It was not obtained while I was on the committee.

Q. Fisks Real Estate Exchange? A. There may have been some lent to Fisk while I was on that committee, but not all.

Q. Do you recall whether or not a loss was sustained by the loan to the Fisk Real Estate Exchange? A. I don't think there was any loss, I think he was perfectly good.

Q. How about the credit or the loans to Ingersoll, what do you know of those? A. That was before I was on the Finance Committee.

Q. Do you recall whether there was a loss or not sustained there? A. I do not recall about that, my mind is not clear about that; that is a good while ago.

Mr. Clark: Mr. Ingersoll went into bankruptcy still owing those notes.

Q. The loan to Ingersoll was not made while you were a member of the executive committee? A. Wasn't made while I was on the executive committee.

Q. You were never a member of the examining committee, were you? A. No.

Q. I show you Exhibit C-104, a report concerning which you testified; did you make up that report? A. I did not.

The Court: He has told us what happened. He says it was prepared and signed by the various officials who signed it, and it was then presented to him, and because the others had signed it he signed it too. That is his statement. Now if you have any additional fact.

Q. When you said that you signed the report, I will ask you if you understood that you were signing the report or were signing to attest the signatures of those who did make the report?

Mr. Hinds: That is precisely the thing I was not permitted to bring out.

The Court: Yes, I think that question is objectionable.

Mr. Whiting: If it is objectionable on the ground that the paper speaks for itself that is sufficient for me.

The Court: The paper speaks for itself. I am not trying the criminal case; if I were then I would have to consider the question of intention, but I am not trying any criminal case; I am trying the acts or omissions of the parties; were they negligent acts, were they negligent omissions; that is what I am trying.

Mr. Whiting: Of course no question of mine would attempt to show that Mr. Mott did not put his name there. I do not know how far I should attempt to go to show that he is not making the report but is merely one of the attesting witnesses. Of course it shows for itself.

The Court: He states the facts, he stated under what circumstances he signed.

Mr. Hinds: He signed under the word "Correct."

The Court: Whatever appears on the paper will speak for itself. He has signed that paper; now whatever the effect of that may be he will be bound by.

Mr. Whiting: Your Honor has made the very distinction just now which I had in mind to bring out. He has signed the paper. In my judgment it is a legal conclusion as to whether or not he has signed the report, and the paper itself shows. The testimony, hewever, was that he had signed the report. I wish to get from this witness whether that was the fact, or whether he signed the paper.

The Court: He signed the paper, and what the effect of the signature is, as I say, will be considered hereafter.

Mr. Whiting: With that statement I will not press any further questions.

Mr. Stiefel: I do not wish to discuss the matter myself now, but my client also signed, and I do not wish to be bound by this, because I have certain observations to make when the time arises.

Q. You were asked whether or not you personally examined the books of the bank; I understand you did not? A. I did not, I was not an expert and did not examine the books.

Q. You are not a bookkeeper? A. I said I wasn't an expert and I couldn't examine the books.

Q. You have never been a bookkeeper? A. No.

Q. Or an accountant? A. No, sir.

Q. Coming now to the matter of the letter from Commissioner Lewis, referred to, May 14, 1909; you heard that letter read? A. Yes.

Q. And you attended a meeting of the board where the letter was discussed? A. Yes.

Q. Now tell what you recall about that, Mr. Mott? A. Well, before that meeting I went up in Mr. Munroe's office, which was over a part of the bank, I went up in Mr. Munroe's office, which is a part of the bank building, and Mr. Munroe told me what had happened, and I felt and was inclined to take it quite serious, and he said "hold on and I will explain this to you"; so he did; he told me this friend of Mr. Smith, he had loaned more money than he ought to loan without coming before the regular board, that is the way he put it to me, and he said "Well, he hasn't benefited himself by it in any way"; why, I think he said it was fixed up and everything was all right,

taken care of, and I didn't hear anything more about it until the meeting, until that letter was read.

Q. The conversation you referred to was before you heard the letter read? A. Yes, that was before.

Q. Now go on. A. And so I did speak to Mr. Munroe something about a reference of Mr. Smith; I never knew Mr. Smith before he came to the bank, and he said they looked Mr. Smith up and he mentioned the man's name recommended him to the bank, which was I think a man by the name of Mr. Ryan, was connected with the Essex County Savings Bank of East Orange; I knew Mr. Ryan years ago, and he also told me of other men, and said his reference was A 1, and he didn't think it would be advisable to let the man go at that time being that the bank had just opened, and after those meetings why we all took the same view, and as far as I know signed to reinstate him.

Q. Did you hear Mr. Smith make his statement to the board with respect to what he had done concerning those matters? A. Yes, I did.

Q. What sort of statement was it? A. Well, the words about as you heard here, that he had loaned this money, and also he went to the Commissioner of Banking and told him about it, brought the matter before him, and the Commissioner said Mr. Smith explained to him, he confessed that he had done this.

By Mr. Stiefel: Q. You mean the Commissioner or an Examiner? A. Mr. Appleton I think his name was, if I remember right, I don't know the examiner, and he brought it to his attention,

and the rest is about what happened as you heard it from other witnesses, about the same thing. We did not think at that time, the bank being a new institution, it was advisable to make a change, so we did it for the good, in other words, of the bank we thought.

Q. Throughout your term as director did the bank have any legal advice? A. Yes, Mr. Munroe.

Q. Am I right in assuming that the question of the legality of your transactions was referred to him from time to time and passed upon by him? A. Yes.

Q. Did you ever as a director or member of the executive committee take any action contrary to the advice of the counsel of the bank with respect to its legality?

Mr. Hinds: Your Honor, of course I object to any effort to bring out the fact that one director may excuse or bring out testimony tending to excuse his conduct because he consulted another director who was an attorney.

The Court: I think it can be shown that the board acted upon the legal advice of Mr. Munroe. Whatever the value of that may be will be considered hereafter. You may ask whether they acted upon Mr. Munroe's advice. Is that what you want to know?

Mr. Whiting: I think I did ask that and it was answered yes, and then I asked: did you ever act contrary to his advice, in other words, getting his advice and going against it.

By the Court: Q. When he advised you in one way did you ever act in any contrary way? A. No.

Q. I direct your attention to the period when you were serving as a member of the executive committee, and to the subject of new loans made during that period. What was the general situation during that time with respect to the making of new loans? What I want to get from you is whether or not there were many new loans made while you were on the executive committee? A. No, we didn't make very many new loans at that time because money was hard to get, and we had loaned our money pretty well up to what we should loan.

Q. How do you know you had loaned the money pretty well up that you didn't have much to lend? A. Well, the borrowers would come as I said, and they didn't have much money to lend.

Q. The bank didn't? A. And they turned the loan down, one loan, until they got more deposits on hand, got the deposits up to a certain standard.

Q. Was the subject discussed, the fact that the deposits were low? A. In a way, yes.

Q. By whom? A. Different ones in the board, and the president and all those.

Q. You say you went to the bank about every day, I think you said nearly every day you dropped in there? A. Three or four times a week, yes.

Q. What did you go in there for? A. Well, in a way to see how the bank was progressing, and I was interested there, and asked the different officers how they were getting along, Mr. Smith personally, Mr. Thompson and Mr. Jennings.

Q. Did you see Mr. Odell in there, the president? A. Lots of times, yes.

Q. And you say you spoke to the other employees that you have mentioned? A. Yes, and Mr. Fairlie.

Q. What were those men doing whenever you saw them? A. They were in back looking over books and would come out and I would talk to them.

Q. Was your suspicion excited by anything you saw? A. No, no, everything was progressing all right as far as I could see.

Q. I think you say you were not a bookkeeper and did not yourself go over the books; is that right? A. That is right.

Mr. Hinds: Didn't what?

Q. Didn't look at the books. Why not? A. Well, we had experts there, and I depended more on men like Mr. Odell and our examining committees and other committees that examined the bank.

Q. Had you heard or read their reports? A. Yes, I heard the reports read at the meetings.

Q. There has been mention of Mr. Smith and his alleged outside connections; one company was the garage, Oakland Automobile Company.

Mr. Hinds: We didn't ask this witness about any of those.

Mr. Whiting: Well, I am willing to hold that until the defendants put their case on. I thought it might clear up whatever this man knows about it.

The Court: He will have to be recalled probably at the end of the case.

Q. Then I won't go into that now. You have learned since the closing of the doors of the in-

stitution that there were large losses suffered, of course? A. Yes.

Q. Many of these items of loss have come to your knowledge since? A. Yes.

Q. Were any of the losses upon loans which were made while you were a member of the executive committee?

Mr. Hinds: Objected to as obviously calling for a matter that this witness cannot know about.

The Court: I think that had better be reserved until they put in their statement and show what the losses were, and then you can show that you did not have anything to do with those losses.

Mr. Whiting: I was about to say that I do not want to be foreclosed with further testimony, and so far as the specific losses upon which I assume the case will depend have not really appeared, and I do not know how far to go, I will stop at this point.

The Court: Yes, that will be a matter of defense.

CROSS-EXAMINATION by Mr. Stiefel:

Q. You spoke of the Telephone Building before as being a building upon which Mr. Morel had a large mortgage I believe; is that correct? A. Mr. Morel owned that building.

Q. He owned that building? A. He bought it, yes.

Q. Is that the building on Market Street near the corner of Broad? A. Yes.

Q. Which is visible from the court room here? A. That is the building.

Q. Big white building? A. That is the building

Q. He was the owner of that? A. Yes.

Q. The owner of it at the time some of these loans were made? A. Those loans were all made before that time, I think they were all made before that time.

Q. But at the time that you disapproved of an extension of his line of credit? A. At that time I disapproved of the line of credit.

Q. You thought he was carrying too much, that was your version? A. I did.

Q. Now speaking of lines of credit, and taking that up in connection with loans made; was there such a thing observed by the board of directors, or was there a practice of giving a line of credit to the customers of the bank? A. If they thought they were good.

Q. And I presume a limit was placed to that line of credit? A. Yes.

Q. And I presume that up to that line of credit the executive authorities and the treasurer, providing the loans were not in excess of one thousand dollars, had a right to loan the moneys of the bank? A. Yes.

Q. That is to say, had a right to, speaking technically, buy the commercial paper of these persons up to that point?

The Court: Well, that is not speaking technically. The technical mode of expressing it is to say that money was lent. The mode adopted by the bank was to say that they were bills purchased. They were not bills purchased in the ordinary sense, that expression is misleading. You can

purchase a note that has been already issued, and you can call the note, I suppose, a bill, if you want to, without referring to a bill of exchange, but when money is lent by a bank to the customer it is not a bill purchased in any technical sense, it is money lent to that purchaser on his note.

Mr. Stiefel: I understand the fact is that they did purchase these notes.

The Court: Oh, they might have purchased some. That is the reason I asked this witness the question what bills purchased meant, and he said it meant that money was lent by the bank to its customers and to others perhaps.

Mr. Whiting: I think it would be wise to ask this witness whether or not when they purchased notes the full amount was to be credited to the account or the amount less interest in advance.

Mr. Hinds: He never looked at a single book of the bank.

The Court: The witness can tell us what he knows about it.

A. That was the custom we had under our by-laws as we purchased paper less the discount; if a note went in for five thousand dollars it would be less six per cent, whatever the note was drawing, and put on the books.

By Mr. Whiting: Q. You have explained to his Honor what you mean by making loans to people, also explain what you mean by purchasing paper? A. That is what I mean, what I just told you.

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The Court: For the purpose of getting rid of the statutory difficulty they called money lent bills purchased. That was the situation.

A. That is the way I understood it.

Q. Coming back to this line of credit; that was then a custom of the bank to give to certain people a line of credit? A. Yes.

Q. Did Mr. Smith have any authority within the scope of his right to take notes for $1,000 or less and pay a consideration for it or give a man credit for it within the scope of that—did he have any right to take such notes from persons other than customers of the bank who had deposits there?

Mr. Hinds: Objected to on the ground that it calls for, out of the mouth of this witness, an opinion as to the authority and right of an officer, which is obviously to be found either in the bylaws or in some specific resolution which would be reduced to writing, or a statute.

The Court: No; I do not think so. I think that they can show the rule adopted by the committee, even though that rule had never been reduced to writing. The practice of the committee.

Q. What was the practice of the committee in that respect? A. That was the practice, that Mr. Smith had the right to loan $1,000 or less to any individual he saw fit.

Q. To any individual, whether a customer of the bank or not? A. That is as I understand it.

Q. That is as you understood it? A. Yes; he probably had an account there, he would open an

account anyway; no stranger, he would have an account there of course.

Q. Now with regard to Mr. Smith's treatment of such matters, what was the practice of Mr. Odell with respect to these loans or purchases of paper, whatever you want to call them, that were passed before approval of the executive committee, if you know? A. They were to keep a certain amount of money there, I should think they would have around five to one, as I remember, deposited; I forget how much that would be.

Q. Before you go any further. The limit of their credit in these cases was determined by this: they could only get five times the amount of their average deposit? A. Yes.

Mr. Hinds: Are you now speaking of the loans under $1,000?

Mr. Stiefel: Yes.

A. Yes, I understand.

Q. Where did Mr. Odell appear in the transaction? He came there every morning? A. Well, Mr. Odell would go there about every morning; they would talk matters over, Mr. Smith and him.

Mr. Hinds: I object to the witness testifying except to such things as he knows of his own knowledge.

The Court: I understand that he will only testify to that. Testify to what you know and not what you heard.

A. Well, I can't say to that, only what I have heard Mr. Odell say.

Q. What you heard Mr. Odell say. Can you testify to what you heard Mr. Odell say?

The Court: No.

Mr. Stiefel: If they are going to try and

show a general negligence, and this gentleman understood that Mr. Smith and Mr. Odell jointly, or in practical effect jointly passed on all these matters, I think the matter is material.

The Court: If the witness can show any instructions that Mr. Odell gave to anybody, if he knows of them or heard them given. I think you are trying now to get in evidence that may be proper in the defense, but it is not worth while to anticipate what their case is yet.

Q. Now you said the only examination that was made was the examination of examining committees; is it not a fact that there were experts in the employ of the State of New Jersey that examined the books?

The Court: Yes, we all know that.

Q. Didn't you pay sums of money for that? A. As I understand it.

Q. Don't you remember passing bills? A. Yes.

Q. Submitted to you?

The Court: It is in evidence that the Bank Examiner came there twice a year. Now I am going to take that as an established fact until it is contradicted.

Q. And that they paid for these expert services?

The Court: You can find out that if you want to. Did the bank pay for the services, is that the fact?

A. That is the fact.

Q. Did I understand you to say—there was a little confusion at that point—that Mr. Smith told Appleton, the bank examiner, first about the Nones matter before its discovery, or before it

came to the knowledge in any way of the banking department? A. That is as I understand it.

Q. That was your understanding? A. That was my understanding.

Q. Do you know whether that was the understanding of the board of directors at the time the matter was discussed?

The Court: No, every man will have to speak for himself on that subject.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. Mr. Mott, on cross-examination you testified to a conversation which you had with Mr. Munroe in which Mr. Munroe told you about Mr. Smith having lent Mr. Nones some money which was not authorized by the board of directors; during that conversation did Mr. Munroe tell you of the other irregularities which were later referred to by the Banking Department respecting Mr. Smith's manipulations in connection with the Nones account? A. He was the first one that brought it to my attention.

The Court: Does that make any difference? They were all brought to the attention of this witness at the board meeting before the vote was taken. What difference does that make, whether Mr. Munroe told him more or less; it does not make a bit of difference.

Q. You said that Mr. Munroe had stated to you that Mr. Smith had not benefited by the Nones transaction? A. He did.

Q. Now later when you heard read the portion of the Commissioner's letter in which the Com-

missioner said: "Taking the various matters together they seem to disprove the statement of Treasurer Smith that he had no interest in any of the transactions, and that they were all made out of friendship for Nones." Did you make any reference or further inquiry after hearing that portion of the letter to find out whether Mr. Smith had in fact benefited by the Nones transaction? A. It was told to me that he had not in any way.

Q. While you were a member of the examining committee—

Mr. Whiting: He never was.

Q. Of the executive committee, in the month of May, 1913, do you recall a resolution authorizing Mr. Smith to sell mortgages of the bank? A. I do.

Q. You have said that while you were a member of the executive committee you observed the bank to be prospering, so far as you knew of it from the statements and the discussions at the executive committee. You knew, did you not, that there was a serious shortage of ready cash and funds in the bank, did you not? A. I did not.

The Court: He has already testified to that; it is not worth while to go over the same thing again.

Q. You have said that the deposits as reported to you were low, did you not?

Mr. German: I object to that.

The Court: I overrule it on the ground that this has all been gone over.

Q. Mr. Mott, Mr. Smith reported to the executive committee each week, did he not, the total of the deposits? A. He handed different sheets around, yes.

Q. You observed those were steadily decreasing from and after the time you went into the executive committee? A. No, I did not.

By Mr. Lum: Q. You spoke of the fact that the examiners were paid. You did not refer to the examiners who did the work for the bank, but to the State Bank Examiners, did you not? A. The State Banking Examiners.

The Court: That is the way I understood it. I do not understand as yet that there was any other examiner who examined the affairs of the bank than the State Examiner coming from outside. Now it may be that there was, but I did not understand it from any eveidence that has heretofore been given.

JAMES B. BANISTER, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. President of James A. Banister & Company, shoe manufacturers.

Q. And what was it between 1909 and 1913? A. It has been that since 1907.

Q. You were a member of several examining committees of the Roseville Trust Compan? A. You mean the examining committee for different periods?

Q. Yes? A. I was.

Q. Beginning when? A. I do not recall; I was on the committee a number of years but I think that some one year or more perhaps—I am not

sure, but I was on the committee most of the time, I can say that.

Q. And you were on the committee during the year 1912 and during a portion of 1913 up to the time the bank closed, were you not? A. Why the minutes will show that exactly, I am not quite clear as to which years I was on the committee but the minutes will show that; I was appointed by the president and ratified by the board of directors.

The Court: If the minutes are wrong in any particular way they may be corrected, but I shall assume, it being conceded that those are the minutes of the company, that the minutes are correct except in the particulars in which it is shown by the defendants that they are incorrect, and so anything appearing on the minutes need not be testified to except in so far as you may wish to state them with a view of laying ground for a question, making it intelligible, in other words.

Q. Now I show you the minutes containing the examining committee's report as of December 14, 1912, and ask you to refresh your recollection from that, and what purports to be your signature, and say whether you were a member of that committee or a member of the committee at that time? A. I would say that was my signature, and I would not have made this signature hadn't I been a member of the committee.

Q. Can you also by refreshing your recollection from that tell me who else was on the committee to the best of your recollection? A. Why, I scarcely need refer to this; I remember the committee pretty thoroughly.

Q. Who was on it? A. Mr. Sexton, Mr. Benjamin, Mr. McCord and Mr. Krug and myself.

Q. Do you recall what part you personally took in the exaination in December, 1912? A. The duties of the several members of the committee varied from time to time according to the wishes of the chairman of the committee.

Q. Do you recall what it was on that occasion? A. I would have to have some data with which to refresh myself to say that definitely. What occasion was that?

Q. December, 1912? A. December, 1912. Now I had a paper that I found in my desk that I think is the report of that date, and if it is I can say that is the day.

Q. I would be glad to have you refresh your recollection from the paper? A. December 14, 1912; I found in my desk a copy of the report that we compiled at that time to offer to the board of directors.

Q. Is that a copy of what you have just seen in the minutes? A. I suspect so; of course without comparison I couldn't dare say.

Q. Can you by refreshing your recollection from the paper which you have produced tell me what part you took in the examination, what particular part? A. This report doesn't say.

Q. And you have no other recollection, independent of the report, as to what you did? A. December, 1912. To the best of my recollection I went over the mortgages and the contingent papers referring to them to verify them and see if they were in the proper shape as assets of the bank.

Q. Do you recall anything else that you did? A. I conferred with the other members of the com-

mittee about the different branches of the work that was being executed to compile this report.

Q. Now, Mr. Banister, in order to refresh your recollection I direct your attention to the fact that mortgages constituted only one of thirty or forty general groupings of the Trust Company's assets and liabilities, and I ask you whether it is not a fact that you did have personal, particular duties outside of the mortgages alone? A. Oh, yes, I did other work than that, I will admit that.

Q. Can you recall what any of the other particular duties were? A. As I said a moment ago, on different occasions our duties varied, and the time elapsed since these reports were made I would be unwilling to state definitely just which part I took.

Q. During any of the examinations did you personally count the cash? A. Yes, sir.

Q. And on the occasions when you did count the cash what did you do after counting it, with respect to the cash? A. What did I do with the cash?

Q. What did you do in that connection after the count had been completed? A. What did I do? Just let me get that clear.

Q. Did you look at any books or records? A. Do you mean did I make any comparison of the record? I surely did.

Q. With what records? A. With the records in the books of the company.

Q. What books? A. I am not sure that I could tell you the names of the books, but the books that are kept for that purpose on the desk of the bank, in operation at the time the examination was taking place.

Q. I suggest that it may have been the receiv-

ing teller's proof book and the paying teller's proof book, since you found it on the teller's desk? A. I didn't say the teller's book.

Q. I beg your pardon, I thought you said the teller's book. I show you receiving teller's proof book which is marked for identification C-52, and ask you whether you can tell from the general appearance of that book whether you looked in a book like that? A. As far as I recall this was not the book, and yet the book had some semblance of this and others books on which we had the general trial balances made.

Q. Was it a book in which the different kinds of cash, such as gold, silver, nickels, pennies, etc., was classified? A. I think we looked at that to see how the money was divided, in what denomination the money was divided, but I don't think that was a matter—that was simply a matter of convenience so that we would know in which box to expect to find it, and how much, that was all.

Q. Did you look in any other books of the bank, for example in the cash book, in connection with the count of the cash? A. I looked, we looked in any books on which our report should be based to make them—to reconcile the assets with the records.

Q. I show you another book labeled "Paying Teller's Proof Book," C-46 for identification, and ask you to see whether that is a book, or a book of the character of the one that you looked at? A. I do not remember to have consulted that book; I would not say definitely because all the books were at our disposal, and we took such books as were required to cover the job that we were doing, but I do not remember to have consulted that book.

Q. I show you a cash book and ask you if you looked at that book, or one similar to that in general appearance? This particular cash book is marked— A. When you say looked at it, do you mean at it?

Q. I mean looked into it in connection with the account of the cash. This is C-7, the one I am showing him. Looked at the inside? A. I can scarcely answer that definitely, but can say this, that we looked at the subsidiary books in connection with the trial balance book, but I cannot state to what extent or how far.

Q. Now by subsidiary books you mean books other than the general ledger in which the trial balances appeared? A. Yes, and I would call that the pivotal book.

Q. You have used the plural "books" other than the general ledger trial balance which contains the trial balances, and I assume that you mean not only the teller's books but also the cash book; so that you looked in the general ledger, in the cash book and the teller's book or books; is that the way I am to understand it? A. I wouldn't say so, because there were a lot of books there, and we looked at all those that applied to the situation that we were examining.

Q. Well now, the book you have before you, C-46, paying teller's proof, contains an itemization of the cash, for example, gold $266.80, nickels anl pennies $14,418.47, do you recall having looked at that page in that book? A. Not that page at that time, but that page didn't pertain to that examination as far as I can see; it is marked January 10, 1913; we made no examination January 10th.

Q. You returned several days after the December 14, 1912 examination, did you not? A. We did, and I know exactly the day.

Q. If you had seen an item of odd amount like $266.80 in gold, that would have been reported by you, would it not? A. I am not sure I can say what I would have done if I had seen it.

Q. Perhaps you can say whether or not you would have reported it had you found in nickels and pennies $14,418.47? A. If we had found anything that we thought was wrong we would have reported it.

Q. Would you have thought that was wrong? A. I have never seen any gold coin that was eighty cents, but I suspect that occasion might have arisen, I don't know.

Q. When you made an examination and looked in a given book of the bank to test a given account that you made with respect of given assets or liabilities, did you confine yourself to the precise date, page and column of the book, or did you or other members of the committee in your presence perhaps look around a little at other pages? A. I can say perhaps, just as you did.

Q. Well, did you? A. I can say perhaps, that is all I can say; we made the examination as of the finish of business on the day we took it.

Q. I show you the general ledger which has been marked C-6, and received in evidence; this is the ledger for the period which begins October, 1911, down to the close of the institution, and ask you if that is the book which you say you looked into for the daily trial balances? A. How could I tell?

Q. Well, can you tell? A. I don't see how I can tell.

Q. By looking at the printed classifications at the left will that enable you to tell? A. The book is very similar if not the same as the one we had, but I would not want to identify the book or its figures.

Q. Did you on the occasion of any of the examinations personally foot up the columns showing the balance in the general ledger? A. In so far as they pertained to our duties at that time we did.

Q. Well then, since you say you examined the condition of the bank on December 14, 1912, I infer from your previous answer that you did make a footing of the general ledger balance as of that date; is that correct; did you do that? A. I am not sure that I did it personally.

Q. Did you do it personally on the occasion of any examination? A. I certainly did foot some of those pages; I cannot tell which ones or where or why, but I certainly did foot some of those pages.

Q. Did you foot both the assets and the liabilities column? A. Why—

Q. Known here as debit and credit? A. I understand what you mean.

Q. When you did foot it you footed both columns, did you not? A. Presumably, I wouldn't undertake to swear that I had done just that at any particular stage.

Q. And when you did foot both columns did you find in each case that they agreed, that is the footing of one column was like the footing of another? A. We never allowed any disagreement to go unnoticed.

Q. You cannot say whether you footed the column of debits and credits in the balances of De-

cember 14, 1912? A. I cannot say, nor could I say that the figures there are the figures that were there at that time. These books have been in the hands of somebody besides the bank for a number of years, who were more or less expert.

Mr. Hinds: I ask that be stricken out as not responsive.

The Court: Yes.

Q. Now you say you were a member of the committee as of the examination which took place in May, 1913, or haven't you said that? A. I don't think I have said it but I can say it.

Q. That is a fact? A. That is a fact, I think.

Q. Now I direct your attention to the fact as shown in the minutes and as previously testified, that the examination was as of the date of May 21, 1913. Now that having been the last examination can you tell us what particularly you did on that occasion? A. My recollection is, and I am quite sure, I went over the collateral loans as classified, to see if they were in proper form.

Q. And by going over them what do you mean particularly? A. Well, I mean dissecting them, seeing if the collateral was suitable or sufficient. The fact of the matter is the report showed whether we reported on that favorably or unfavorably, that would show our decisions.

Q. Now as to the amount of those loans, what did you do in that connection as distinguished from whether or not they appeared to be supported properly by collateral? A. Do you mean footing the amount of the collateral loans and comparing them with the books?

Q. Yes, what did you do in that connection? A. That was done.

Q. That is to say, you made out a list from the loans themselves, and then footed it, and then compared it with the general ledger? A. The loans were tabulated, the collateral loans were tabulated.

Q. By whom? A. By some employee of the bank.

Q. Had that been done before the committee arrived, or was it done at your instruction after you arrived? A. It was perpetual.

Q. That is to say, you found a list there with the loans? A. I found more than a list, I think I found a book, I think there was a book for that purpose.

Q. Then is it a fact that you checked up the loans with the items in the book for that purpose? A. That is exactly what was done.

Q. Then confirmed the footing in the book? A. Confirmed the footing with the ledger.

Q. Then compared the footing with the ledger? A. That is exactly what we did, as far as I remember.

Q. Since we are on the subject of the collateral loans; did you examine the collateral loans in the previous examination in December? A. That I am not sure of; I am sure of the other because I found some scratch memorandas made at that time.

Q. Have you any independent recollection aside from books of about how the collateral loans were running during the last year or so of the bank, the amount in the aggregate? A. I do not recall the figures.

Q. Do you recall whether or not they were as much as one hundred and fifty thousand dollars at any time? A. Well, I wouldn't venture to say.

Q. Can you say whether or not you made a footing of the general ledger personally on the occasion of the last examination, the one in May, 1913? A. I cannot say that I did it personally.

Q. In that examination? A. You said December, did you?

Q. May, 1913, I meant to say. Did you in May, 1913, make a footing of the general ledger? A. I cannot say that I did at that time, and yet it may have been that I did.

Q. In connection with that examination did your part include any examination of the deposits as shown in the individual ledgers? A. It was our custom to list the deposits from the individual ledgers and check them back.

Q. Was that part of the work that you personally did in May, 1913? A. No, I didn't; my work, I just told you what that was.

Q. You have told me of collateral loans. A. Yes.

Q. There must have been some other work besides that one item? A. I went over the mortgages, insurance papers, and a lot of things of that nature.

Q. Did you count the cash in May, 1913? A. I did not.

Q. Did you have any part in reconciling the bank accounts with depository banks in May, 1913? A. I had several conferences with the chairman of the committee on that line; he was accustomed to writing the banks and having the replies sent to his home and the next time we met they would be considered.

Q. Will you tell me in detail what was the method of reconciling depository bank accounts, according to the practice of the examining commit-

tee while you were on it; telling us not only what you know from what you did personally but also what you know from what any member of the committee told you that he had done in connection with the examination? A. The chairman of the committee usually assumed that part of the work and took the balances of the depository banks from the ledger, and wrote to each of these banks asking the condition of their books, to which they usually replied by return mail. The comparisons were then made, and in every case where there was any disagreement the figures were reconciled by some items in transit.

Q. And how did you reconcile the items in transit, what further steps? A. Well, the records of the day on which examination was made would show whether depository banks had funds in transit or not.

Q. You mean funds to them or from them? A. Either way, it would affect the result just the same, only adversely of course, one would be adverse to the other.

Q. In connection with reconciling the bank accounts did you ever make a comparison between the stubs and the returned vouchers, or any member of the committee? A. I do not recall that they did, I don't recall anything about it.

Q. Did you make any comparison with the other books other than the general ledger, that is, the subsidiary books? A. In so far as it became necessary we did, I can say that, because we did the work assigned us according to our knowledge of it, and to the satisfaction of the board evidently.

Q. Was it ever a part of your work in any examination to check up the deposits from the indi-

vidual deposit ledger; I believe you said that it was, did you not? A. Yes.

Q. Will you tell us exactly what you did on the last of those occasions that you can remember? A. Well, it wasn't in the May or in the December examination that I did that work, so that it is longer ago than the others and my recollection may be faulty, but as I recall one of the bookkeepers was assigned to the individual ledgers and listed on the adding machine each of the items which we afterwards checked back, item for item, one member of the committee going over the book while another member went over the slip, checked the slip.

Q. What do you mean by "slip"? A. The machine slip in the adding machine.

Q. Who manipulated the machine? A. I just said that one of the bookkeepers did.

Q. What is the name? A. One of the bookkeepers was appointed to do it because his agility with the machine would be greater than mine or any member of this committee and he did it rapidly, and then we checked it back from the ledger itself.

Q. Did the bookkeeper make the mechanical operation of arriving at a total from the machine? A. That was what we had.

Q. Now then, having arrived at a machine total from the machine list what did you next do. A. We compared it the same as we did all the other figures we did to the general ledger; what you call the general ledger, I do not recognize it by that name.

Q. Was that done the same day or not that the examination started? A. It was done as of the same day; sometimes we were not ready to check

back all the items the same afternoon, it was a lengthy job; if the items were made from the book it was not so necessary to verify them on our check as long as we had the list in our hands and could check it tomorrow or next day and could compare it with the ledger at that time.

Q. In the meantime the ledger was in whose possession? A. It was in the bank; we didn't carry any of the books home.

Q. And when you say you footed the general ledger, when did you foot it with respect to the date of the examination? A. As of the close of business on that day.

Q. I understand that, but when did you do the footing, not as of the day you did it, but when did you do it? A. Immediately after the close of business those figures were taken off, and if my recollection serves me we did not leave there until we had those figures in our possession on the slips.

Q. You are referring to the figures from the individual ledger showing deposits? A. Isn't that what you mean?

Q. No, my question had to do with the footinging of the trial balances as shown in the general ledger. What I want to know is when did you perform that footing with respect to the date of the examination; was it on the day that you went there first to make the examination, or was it on some subsequent date when you came back to complete your work? A. It is rather difficult to answer that, but as I recall it was our custom to take the figures from the general ledger as of the close of business on the day of examination and keep them, take them off on a slip of some kind and keep them for verification as our work was completed.

Q. When you went back there on a subsequent date did you take that copy, I suppose you mean, of the general ledger column balances as of the examination day and see that the figures were still in that condition in that column? A. Unless there was some variation in our reports I don't think we would have referred to that again, I wouldn't have thought of referring to that again, they were fixed on the books.

Q. According to the practice of your examining committee about what time of the day would you go into the bank? A. Well, it was usually just at the close of banking hours.

Q. That would be about three o'clock? A. About three o'clock.

Q. And when you went there would you find anyone working on the books? A. I found everybody working, if we hadn't we would have wondered why.

Q. You all went in a body, you all went there together? A. No, I won't say that; two or three of us went in, and sometimes others came in afterwards.

Q. How soon after you entered the building did you commence the examination? A. Why, within a few minutes.

Q. And after you commenced the examination was any work done on the books by anyone there in the building? A. Why I think the records of the day were completed so that we could have the business as of the end of the day.

Q. That is to say, if the paying tellers were still at work on their cash and books after you gentlemen came in and announced the purpose of examining they would finish up their work and

finish up their entries before you interfered with their cage; is that correct? A. That is not correct.

Q. What is the fact? A. That is not correct in this respect, so far as the cash is concerned it was our custom to have one of the members walk right in the cash cage as soon as we went into the building, and that without any idea of finding any dishonesty, but that was our plan.

Q. Well, were any entries made by the tellers in their proof books after you entered the bank? A. They might have done so, I wouldn't have known.

Q. And on the occasion of the last one in May, 1913, who was the committeeman who at once entered the cage and took charge of the cash? A. Well, I don't know as I can recall; the member who did it could easily tell, if he has been on the stand, I don't know as I can.

Q. When you counted the cash, when that was part of your work did you ever find any papers or checks or anything else in the cash except actual currency? A. Why nothing of any moment; I rather recall there being some little petty slips for postage, or something of that kind.

Q. Nothing of any substantial amount? A. Nothing of any substantial amount.

Q. According to the practice of the committee in examining the cash, the purpose was, as I understand it, to count the cash and then see that compared with certain figures which you found on the books? A. Yes.

Q. The man whom you delegated to take physical custody of the cash and see that the cash was not changed did not, however, interfere with the

tellers who continued to make entries in their books for a while after the examination commenced; is that corect? A. Why substantially so; I do not think the books were closed, that is physically closed, because we were there; I think they finished the day's work.

Q. Then according to the practice as you had it in your examinations, it would have been possible, wouldn't it, for entries to have been made in the books conforming to the amount of cash of which the specially delegated committeeman took physical custody; is that correct?

Mr. Stiefel: I object. Is not that going a little too far? That is purely a matter of inference.

The Court: I think he may answer that.

Q. (Question read.) A. Figures might have been made in the books, without question.

Q. That is, while a committeeman took custody of the cash and prevented any physical change being made in the cash he did not take physical custody of the books wherein that cash was recorded, but those books continued at least for a while to be open and subject to entries after your committee arrived; is that a fact? A. Well, that is rather complicated, but I can say this, that it was our custom, as I recall, to immediately take the figures from the main ledger which we were to use for verification.

Q. Yes, but the main ledger had not been written up with respect to the day's cash of that particular day when you arrived, had it? A. I won't say that, probably not, but I won't say that.

Q. Those entries were, if made at all, so far as you know made after you arriced, were they

not? A. I don't see how I can say that because I don't know that any entries were made after we arrived; I simply, like you, suspect there might be.

Q. When you gentlemen went in there to make your examination did you seize upon the general ledger so that it was impossible to make entries in the general ledger after the purpose of your coming had been known to the employes of the bank? A. We did not seize it, as you would seem to indicate.

Q. I may use a better word. Did you take it into your custody so that it was impossible to make entries in it after you arrived and announced your purpose? A. We took memorandum from it immediately.

Q. How immediately, if I can use the expression; was it the first thing you did when you got in there? A. Oh, I am not able to say that; we went with the idea of verifying the figures, and we took the figures for verification.

Q. When you went in there you did not find as of the day of your examination that the daily trial balance had been written up in the general ledger, did you? A. No, probably not.

Q. When you went there on the occasion of any of your examinations did you find Mr. Smith had worked upon the general ledger? A. I cannot say upon what book; I found Mr. Smith there.

Q. At work on a book? A. At work probably, or he was there and doing something.

Q. Now you knew, did you not, that Mr. Smith kept the general ledger; that was a fact that you observed, was it not? A. I cannot say that I knew that he kept it solely.

Q. Mr. Banister, was it a subject of consideration by your examining committee on the occasion of any of the examinations whether or not the available funds of the institution were below the minumum of fifteen per cent of the demand liabilities? A. I do not remember to have heard that considered in connection with the examination.

Q. And was it ever a subject of consideration by your examining committee whether or not the cash was below the minimum of three per cent of the demand liabilities? A. I do not recall that that was ever considered in our examinations.

Q. Did you ever look to see whether either of those minimums was depleted? A. Personally, no.

Q. And so far as you know from statements of the others or what you observed them to be doing, did any of the others make any investigation to see whether that condition existed? A. I cannot account for the others.

Q. I show you the paying teller's proof book as of December 14, 1912, and I call your attention to the column headed "Checks paid by the Roseville Trust Company," and to the fact that there is a total given at the top of the page, but there are no items below that in the column itself. That is one of the books which you had in connection with counting the cash, is it not? A. This is the book you spoke about before, is it not?

Q. It is, yes. A. I make the same answer.

Mr. Clark: What is the anwser?

Q. Suppose, to save time, you answer the question again? A. I wouldn't like to answer definitely, or my words might be different.

Q. Well, it is one of the books you looked at in counting the cash, you found the cash items there, and it is one of the teller's proof books? A. Assuming that this is one of the books of the bank that was in operation at that time, and that figures had not in any way been mutilated, it would probably be the book.

Q. You do not find any evidence in that column under the heading "Checks paid Roseville Trust Company's that anything has been mutilated at all, do you; so far as you can see it is a perfectly clean column on which a figure has never been written, is not that right? A. I wouldn't like to say that.

The Court: Why ask the witness as to that which is open to observation?

Mr. Hinds: Well, it is a matter of demonstration; the other counsel may not know what I am getting at in my examination unless I call it to the witness's attention.

Mr. Stiefel: What page is it?

Mr. Hinds: Page 634.

The Court: All the witnesses have been unwilling to commit themselves to the proposition that the books that you have shown them are the books of the institution. Now you may be able to prove beyond any question that they are, but that proof will have to be by other witnesses.

Mr. Hinds: Mr. Odell identified this book as one of the books of the Roseville Trust Company, both from its general appearance and from its containing in hand writing which he recognized entries of the

various clerks of the bank, and it did contain those two things that I have mentioned, particularly the hand writing.

The Court: I want to say this, as I have said before in reference to other matters, if in the course of this case you ground your claim upon any particular entry, then of course it will be proper enough for the other side and for you to call the attention of the witness to that entry and find out whether the entry accords with the fact.

Q. It is a fact, is it not, that it was almost the invariable practice, and the system of the Roseville Trust Company called for the listing of the checks by the Roseville Trust Company in the paying teller's proof book, and that the column calls for such listing? A. I can say the heading of the column calls for it, but I cannot say about the other books; I didn't give instructions to the bookkeeper.

Q. You looked at this book on more than one occasion? A. Yes.

Q. And every time you looked at it, except the one, you found in that column a list of figures, did you not? A. I didn't inspect the book often, probably only when we were examining.

Q. Well, on the occasions you did inspect the book and counted the cash did you make any verification of the checks by the Roseville Trust Company that day, which is a part of the proof for the day? A. I cannot say as to that.

Q. When you proved the cash, if you proved it at all? A. I didn't do it personally I can say.

Q. Did you ever prove the cash, other than

merely counting it physically in connection with any examination? A. What do you mean by proving the cash?

Q. I mean by checking up the several operations as they are contained in the proof, contained in the paying teller's or receiving teller's proof; you will find the operations before you on that page; did you ever check up those operations as of the day when you counted the cash in connection with any examination? A. I do not recall exactly, but I think I did it in connection with somebody else.

Q. When you did it in connection with somebody else you made a comparison, didn't you, of the checks paid the Roseville Trust Company, as called for in the column at the extreme left of the proof page, forming part of the proof?

Mr. German: I object. Why doesn't the witness state he did prove the cash, if he did.

A. I cannot recall having done that on this book.

Q. I have exhausted his recollection and I am trying to refresh it from the book itself. When you did take a proof of the cash was it your custom to take that proof with respect to all of the operations contained and called for on the proof page of the paying teller's proof book for that day? A. I cannot say because I do not recall just all the operations.

Q. You do not remember whether or not on December 14th it came to your attention that the column of checks paid was utterly blank; you do not recall that? A. I do not recall that.

Q. Now on that same date I show you the re-

ceiving teller's proof, and ask you whether in connection with proving the cash you looked also in his cage and made comparison with entries in his book? A. To the best of my recollection we did.

Q. Did you find anything but actual money in the cash on that date? A. Nothing of any consequence, as I recall.

Q. Did you find on that date any sundries? A. I cannot say as to the specific date, but as I said before, there were occasions where some little items, petty items were slipped in the money drawer, as bookkeepers have a habit of doing.

Q. What did you understand in the performance of your counting of the cash and proving to be meant by the word "sundries," and what did you call for or expect to find in counting the sundries? A. It wasn't a question of sundries, it was a question of, if anything—I am not ready to swear there was anything, but I have a faint recollection of there being some slips for some little items that might have been postage, or something of that kind.

Q. The trifling items which you say you found in the cash were something perhaps under a hundred dollars? A. Oh, yes, minor, small.

Q. It couldn't have been anything like $1673.12, could it? A. Not without having our observation.

Q. If you had found in the cash items or objects other than actual money to the extent of $1673.12 you would not have counted that in with the cash and regarded that as a legitimate part of the total which you confirmed with the other books of the bank, would you? A. Not without an explanation.

Q. I direct your attention to the item sundries, of December 14, 1912, $1,673.12, which is necessary, demonstrably necessary to form the total at the bottom of that column of $101,697.15, and I ask you whether you did find anything to that amount in the cash on that day? A. I do not recall that, but there might have been items that had some explanation with them which would make it possible.

Q. Now having on that date proved the cash or purported to prove it, did you make a comparison with the cash as shown there, with the cash as shown in the general ledger? A. We checked up the books on each of the items as we did it.

Q. Now will you please write down— A. This December 14th, I didn't check the cash at that time any way.

Q. Just make a note of the amount of that total.

The Court: What do you want to show, that the two items do not correspond?

Mr. Hinds: I want to show that the total of the receiving teller's cash and the total of the paying teller's cash added together will equal the amount of cash as shown in the general ledger, and that that total necessarily includes certain sundries other than cash to the extent of $1,673., so that whoever counted the cash of that committee that day must have included in his cash a lot of stuff that was not money; it is demonstrable from the book and from this witness's statement of the method that he pursued.

The Court: This witness says he did not count the cash on that particular day. Now he can add nothing to that which is demonstrable in the book. The person who counted the cash will no doubt be called upon to explain how he dealt with the item of sundries, but this witness says that he did not count the cash, and that being so, his statement of the contents of these books will be of no value for the books speak for themselves.

Mr. Clark: If your Honor please, we cannot find out who did count the cash on any date.

Mr. Hinds: None of them admit doing it.

The Court: Well, that will make against them; if they cannot explain such an item as that it will make against them; they will all be asked, I take it, to explain that and if none of them can explain it why it will indicate that there was some slackness somewhere, if the items as they stand now stood in the same way then.

Q. Now Mr. Banister, on any of the occasions when in connection with an examination you looked at a daily trial balance in the general ledger, did your eye ever turn an inch to the right or an inch to the left for the purpose of verifying the extensions from the previous day's trial balances? A. I do not remember to have verified any other than the day on which the examination was begun.

Q. Well, now, I put before you the general ledger to refresh your recollection, and direct

your attention to the fact for example on May 21st the column appears in the middle of the page and immediately to the left is the balances of the 20th, and immediately to the right those of the 22d, and I ask you whether having your attention directed and your recollection refreshed you can say whether you ever confirmed the arithmetical operations of adding the debits, subtracting the credits from the previous day's balance, so as to arrive at the balance for the day and test the balance for the day on which you made your examination?

Mr. Stiefel: I think the whole method of examination, which started out with a statement such as was made in this case that whole method of examination is vicious. This witness here was asked as a preliminary question whether he had ever cast his eye an inch to the right or left in order to compare footings or amounts carried forward, or amounts that had been carried forward, with the preceding amounts. Then he is asked: now I call your attention to such and such a feature in this book here and ask you whether that refreshes your recollection; after the witness has said that he cannot recall I think it is fair to show him and ask him whether looking at that page he did so and so, but I do not think it is fair to incorporate in the record a characterization of this side of this book, when the witness has not shown that he had any knowledge of that particular day, and then cross-examine him abont that, and get the whole argument

into the record, and make this man commit himself out of his own mouth with respect to a matter that he may know absolutely nothing about. That whole method is essentially vicious and I protested against it from the start. This is not my client, and he is one of the parties who is discharged, but nevertheless the whole atmosphere is vicious in my opinion, and I think that as far as it may influence my case I should protest against it. If the witness recalls seeing that page, recalls today that he saw that page, then well and good; if he does not recall seeing that page today, and if he does not recall ever having cast his eye to the right or left, or if he does not recall any error, then how can he recall what the attorney is trying to put into his mind, or into his mouth.

The Court: Well, as I understand it this witness was a member of the examining committee, and what counsel is asking is his method of examination. Now I take it that that is a legitimate subject of inquiry. The preliminary part of that question seems to me to have been in part unnecessary, but when he comes to the interrogative part of the question I do not see any objection to it.

Q. Now repeating the interrogative part of the question, Mr. Banister, was it your practice as a member of the examining committee upon confirming the items contained in a trial balance as of the date of your examination to check the extensions to that balance from the balances of the

preceding day appearing in the column to the left? A. I cannot say that it was, I do not recall.

Q. You don't recall ever having done that? A. I do not recall, as near as I can say.

Q. Do not recall whether or not you did do it; is that right? A. I do not recall whether or not I did.

Q. Do you recall whether you saw any other member of the examining committee do it? A. I cannot say I did.

Q. Since you do not recall one way or the other, and in order to refresh your recollection I direct your attention to the balance on December 13, 1912 of collateral loans, amount of $51,438, with neither debits or credits on that to the following day, and extended to a balance on the day of the examination of December 14th, 1912, $100,000 larger $151,438, and I ask whether you performed the operation which I have just described on making that extension, having your recollection refreshed by the page before you? A. I think the only figures we considered were those; we might have glanced back, and even if we did these books may not represent the condition at that time.

Q. Did you look at either the debits or credits just above the balances and just to the left of the balances, as of the day that you did make the examination—leave out the day before—did you look at these columns, debit and credit, as of Saturday, December 14th, the very day of the examination, or did you look only at the balance figure? A. I am not sure, I rather think that we looked at this but I am not sure.

Q. Now did you compare any of those debits

and credits on the very day of the examination with the amounts shown in the subsidiary books of the bank to support those debits and credits? A. I am not sure that we did, I rather think that we made the general ledger the basis of our calculation.

Q. You are referring only to the balance columns? A. Yes, the balance columns.

CROSS-EXAMINATION by Mr. Lum:

Q. Have you any notes or memoranda that will show what parts you performed in these various examinations? A. In one or two.

Q. Will you refer to them? A. This is probably, and I think it is surely, a copy of the report that we made to the board of directors in our examination of December 14th.

By the Court: Q. Nineteen what? A. 1912.

Q. Does that refer to various items of work? A. That reports on the various items and makes recommendations to the board of directors.

Q. Did you in connection with that or any of your examinations observe any inaccuracy or any errors or omissions in the books to which you did not call attention?

The Court: I think it would be better to ask him whether he observed any.

Q. Did you observe? A. I did not. Any inaccuracy you mean?

Q. Yes? A. I did not. There were items that had to be adjusted, as I have said before, on the corresponding banks.

Q. The minute book shows that you are a member of the examining committee on the examination of June 27, 1911? A. That is typewritten.

Q. Yes. I call to your attention the observation with reference to a difference of $13.62? A. Yes, I recall something of that kind; I do not recall the item; I recall something of that kind in that connection.

Q. Do you refer to that in your report? A. I surely do.

Q. You were at the time a stockholder of and a depositor in the Roseville Trust Company? A. Stockholedr but not a depositor.

Q. Your brother was also, Mr. William Banister? A. My brother was also.

Q. I call to your attention the minutes of December 13, 1911; you are also a member of the committee at that time with Mr. Sexton and Mr. McCord, and did you examine the various items, mortgages, etc. at that time? A. Is that the report of the committee?

Q. Yes? A. Or is that the minutes?

Q. The minutes. A. That is not the signed report of the committee?

Q. Yes, the report is entered in the minutes. A. Of course I wouldn't identify that without it was the paper I had my signature to, I expect it is a true transcript.

Q. Do you recall that it mentioned, observed that in one case there was a mortgage of $2,800 but insurance of only $2,500, and calling that to the attention of the bank, so small a discrepancy as that? A. I remember that we did make some notations of that kind and included it in our report.

Q. Then neither big or little was there any error or inaccuracy to which you did not call the attention of the authorities? A. There were none.

Mr. Hinds: You mean that he observed.

Mr. Lum: That he observed.

A. That I observed.

Q. Or that you knew of in any way? A. There was none, I can definitely state that.

Q. There were certain notes and loans of Scarlett and of the Stevens Rye Company; were you at any time assigned specific duties with reference to those items, making inquiries, etc? A. In making our examination we discovered that there were items that should be reduced, and the committee recommended in one of their reports that the board of directors appoint a committee to investigate exhaustively the condition of these items and get from the borrower a statement of his financial condition on which to base the credit.

Q. Did you do any work in that connection? A. They appointed me the committee.

Q. Have you notes and memoranda with you showing your work in that connection? A. I think I found that in connection with these others.

Mr. Lum: I will offer them for the purpose of identification.

Marked for identification Banister No. 1.

CROSS-EXAMINATION by Mr. German:

Q. Do you know what your duties were as a member of the examining committee, as set forth in paragraph 22 of your by-laws? A. I had read that carefully.

Q. What experience had you had, Mr. Banister, in the matters of bookkeeping and accounts? A. I had never been a bookkeeper, but I had always had something to do with figures.

Q. What business are you connected with, the James A. Banister Company, as you stated? A. James A. Banister Company.

Q. Do they do a large business or small business? A. Well, it depends on where the limit is or where the line is between a large and a small business; it is a large business of its kind because of its character.

Q. How many employes did it employ? A. Between five and six hundred.

Q. And has that been the case during the last six or seven years? A. Yes, with some variations.

Q. What has been your connection with the business during the past?

The Court: Oh, no; you have shown that Mr. Banister is a man of business reputation, and that he is at the head of a large business, and it seems to me that is as far as it is necessary to go.

Q. Did you, or did it ever come to your knowledge that any officer or employe of the company had improperly or negligently performed his duty? A. It did not.

Q. Had anything come to your knowledge to awaken any suspicion in your mind of the honesty or fidelity of any employe of the company or of any officer? A. There had not.

CROSS-EXAMINATION by Mr. Whiting:

Q. Did you ever in any way notify the board of directors that the condition of the Trust Company was other than that shown in your reports? A. Did not.

By Mr. Hinds: Q. Did you ever have any knowledge that the condition was other than as shown in your reports? A. We did not.

CROSS-EXAMINATION by Mr. Fairlie:

Q. One question in regard to Mr. Sexton's testimony. Did you ever help him reconcile the accounts of the corresponding banks? A. I cannot say that I helped him specially, I was with him and consulted with him about it, he consulted me, we consulted together about those things, and if there was any discrepancy.

Q. On more than one occasion? A. I think on nearly every occasion, Mr. Sexton showed the letters from the corresponding banks to the other members of the committee who were present at the time, but they couldn't all be there on each occasion.

CROSS-EXAMINATION by Mr. German:

Q. When any complaint was made by the Commissioner of Banking and Insurance concerning the affairs of your company, are you able to state as to whether those matters were adjusted to your satisfaction? A. Why I can say that Mr. Odell always brought those matters before the full board and they were discussed and everybody knew of them, and of course they had to be satisfactorily adjusted or there would be some adverse comment.

Q. I ask you now to state whether they were adjusted? A. I can say yes. I had to think how to answer it, that is all.

By Mr. Hinds: Q. To the best of your recollection did it ever occur on the occasion of any of the examinations that the member Benjamin of the Examining Committee ever had so small a roll in the examination as merely to check up the collateral loans and nothing else? A. To properly check up the collateral loans was some job. Mr. Benjamin was always considered a very efficient and active member of the committee.

WILLIAM J. THOMPSON, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. Salesman.

Q. For whom? A. Fischer Company.

Q. You were employed by the Roseville Trust Company? A. I was, yes.

Q. Tell us in what capacities and during what periods, and each of the several capacities? A. From the opening of the bank to its close I was employed by the Trust Company; from 1908, December, 1908 to about April, 1912 I was a bookkeeper; from that time on I was teller.

Q. Which teller? A. Receiving teller, from about September, 1912 to August, 1913, and paying and receiving teller for a month.

Q. For how long? A. The last month of the bank's existence.

Q. Who gave you your orders? A. Mr. Smith.

Q. And who employed you? A. Mr. Smith.

Q. Was there in the bank any—

The Court: Before you go into that, let us know what the office force was when you first went in there, what did the force consist of?

A. Teller, bookkeeper, stenographer and acting officer Smith.

By the Court: Q. Can you give their names? A. Teller Jennings, stenographer Miss Hicks, Mr. Smith and myself.

By the Court: Q. Well, now, how long did that continue? A. That continued up until about sometime in 1911 I think it was when Mr. Mindnich was brought into the bank as assistant bookkeeper.

By the Court: Q. Then you went on until when? A. Went on that way until I think it was sometime in 1912 when there was another clerk brought in; at that time Mr. Mindnich had been made bookkeeper and the new clerk was made his assistant; I was then made teller.

By the Court: Q. What was the name of this new clerk? A. We had several of them; one of them I think his name was Brennan, and I cannot think of the names of the different clerks that we had there, but they all acted in the capacity of assistant bookkeeper.

By the Court: Q. One after another? A. One after another, yes, sir.

By the Court: Q. They were not there together? A. There may have been two of them there together, because we had a young man came in on Saturdays who was a High School student, to help out on Saturday only.

By the Court: Q. His name? A. Gannon.

By the Court: Q. Now that continued to the end, did it? A. That continued to the end, yes, sir.

Q. Then as to the four original employes, they remained from the beginning to end? A. With the exception of Mr. Jennings, Mr. Jennings left about a month before the bank was closed.

Q. And Mr. Mindnich stayed after he once arrived right through to the end? A. Yes.

Q. Tell us what Mr. Smith's duties and powers were in the bank?

Mr. Stiefel: I object to the word "powers."

The Court: Not what his powers and duties were; they are shown by the by-laws, but what he actually did.

Q. What did Mr. Smith do? A. Why he was the active officer in the bank there, took charge of the administration of its affairs during a business day, discounted all the notes, and was the man in charge, general charge.

Q. Did he have a desk? A. He did, yes.

Q. Was his business done largely at his desk or in other parts of the Trust Company, with the outside public I mean? A. Why some part of it was done at his desk in the front office, and other parts of it, at different times he was in the back room, directors room, met customers back there.

By the Court: Q. Was there a separate window for the receiving and paying tellers? A. There was in the latter part of the bank's existence, the cages were split.

By the Court: Q. And you were both receiving and paying teller? A. For a very short time, yes.

By the Court: Q. Was there a receiving teller and paying teller toward the end? A. There was a receiving and paying teller from October, 1912 up to August, 1913.

By the Court: Q. Who was the paying and who was the receiving teller? A. Mr. Jennings was paying teller; I was receiving teller.

Q. How was it for the last month, simply one teller? A. I acted as paying and receiving teller; Mr. Smith assisted me.

By Mr. Whiting: Q. What period? A. The last month of the bank's existence.

Q. While you were acting as teller how far were you from the front office, the part of the front office where Mr. Smith did his work while

in the front office? A. Why there was merely a glass partition between.

By Mr. Stiefel: Q. You mean glass and wood? A. Glass and wood, yes.

Q. You say Mr. Smith granted discounts; do you recall from what you heard whether or not he granted those discounts off-hand, or was it his practice to say to the customer that he would report after consulting his superiors?

Mr. German: I object.

By the Court: Q. What was the course of practice? A. Some of them he discounted immediately; others were held for a time, to be referred to the board of directors.

The Court: Well, you can ask the amount of those that he discounted immediately.

Mr. Stiefel: If this witness knows, your Honor.

Q. If you know and can recollect, will you tell us whether you recall—

The Court: Well, tell us about it; was there any rule in reference to the sums that would be discounted immediately?

A. Why, I don't know, I don't know, there was comparatively no rule because notes of various amounts would go through without any delay, most of them being renewals of old notes; whether the new notes of a given amount, a large amount, would have to be referred to the board of directors or not I do not know, or what the amount is.

By the Court: Q. Suppose there was a new note of $1,500 or $2,000, how would that be disposed of? A. In some cases it would go through immediately, and in other cases it would not.

Q. What were your duties as receiving teller with respect to the payment or certification of checks, if any? A. Why as receiving teller I certified only checks, well I didn't certify them as receiving teller, I merely certified them when the paying teller was not there; it was his duty to certify.

Q. Now during the period in which you were receiving teller will you tell us whether or not you certified or paid checks on any accounts where there were not funds sufficient to warrant it on the account? A. Where there were not funds sufficient to warrant the payment of the check on the ledger I have paid a great number of checks, yes.

Q. Tell us under what circumstances, and at whose direction you did that, giving us the names of those accounts as far as you can remember? A. Oh, there was a great number of the accounts, I suppose they would number at least twenty-five, at different times; some accounts were handled that way almost all the time; others of them were handled in that manner at certain times and at other times the checks would be charged directly to the account on the ledger. The reason for the payment of the checks regardless of the balances shown on the ledger was because of instructions received by Mr. Smith to pay such and such—

By Mr. Stiefel: Q. By Mr. Smith? A. From Mr. Smith, to pay such and such a check, on such and such an account, notes or collateral loans or credit o some kind that would be sufficient to pay any withdrawals.

Q. Now that latter part of your statement, are

you referring to what he told you or what you knew to be the fact as to there being these credits? A. What he told me, and also what I knew to be the fact in some cases.

Q. Now will you give us the names of some of the depositors whose checks were honored but not charged? A. Do you mean honored but not charged eventually, or not charged at that time?

Q. Not charged at any time, so far as you knew? A. Well, of course I didn't know whether they were ever charged eventually until after the bank was closed, then we all found that a great number of them hadn't ever been charged.

Q. Give us the names of some of those depositors? A. Home Ice & Products checks; William C. Armstrong; John B. Scarlett; Intercity Land & Securities Company.

Q. Now I show you a list contained in Exhibit G of the bill of complaint, found at page 62, and ask you whether in addition to those you have mentioned you find any in that list who were depositors whose checks were paid but not charged? A. All of these checks were paid and not charged.

Q. All of those that you find in that list? A. Yes.

By the Court: Q. And that list is contained on what page? A. Sixty-two, Exhibit G.

Mr. Congleton: Exhibit G commences on page 60.

Mr. Hinds: Well, I am referring to only that part of Exhibit G which is on page 62.

Mr. Congleton: Isn't it all part of one

exhibit? It is so stated in the bill of complaint.

The Court: Well, some of them might have been so dealt with and others not; now he is telling us what was so dealt with; you can cross-examine about it.

Q. Let us take the Armstrong checks; can you tell us about when you first received instructions to pay but not charge an Armstrong check?

Mr. Stiefel: Instructions from whom?

Q. Well, he said from Mr. Smith. You did not receive instructions from anyone else, did you, in that matter? A. I did not, no. Why the first instructions that I received to that effect were some time in 1912 after I took over the receiving teller's cage, that is, I took it over temporarily before I was actually appointed receiving teller, and even while I was temporary receiving teller I had such instructions to pay the checks.

Q. Can you say, roughly, how many of those Armstrong checks there were, whether ten or a thousand? A. I cannot say whether it was a thousand or five thousand; there were a great number of them.

Q. But it was several hundred, can you say that? A. Yes.

Mr. German: I think we ought to start out, beginning the new week, with counsel asking the questions that should be asked. Now he puts the words a hundred or more in his mouth; he said he didn't know, yet counsel places a figure that he wants him to say.

The Court: I think the question was

a fair one. He first attempted to get the witness to state, and the witness not stating why he asked him whether they exceeded a certain number; I do not see any objection to that.

Q. Now having paid one of those Armstrong checks, according to the practice respecting these uncharged checks what did you do with the check? A. Turned over to the paying teller at the end of a day.

Q. And his cage adjoined yours? A. It did, yes.

Q. Can you tell me, if you know, what he did with them? A. Held the checks.

Q. What do you mean by holding the checks? A. Why, hold the checks in his cash as part of his cash.

The Court: I do not think I quite understand that; just explain that.

A. Why the paying and receiving tellers cash are both made up of items other than cash; that is, the balancing of the book has to take into consideration—in the receiving teller's cash proof you have to take into consideration the total of the deposits received for the day, and the total of the general ledger items, and there are probably half a dozen entries or figures to be entered on each side of the receiving teller's proof, half a dozen on the debit side and half a dozen on the credit side, or some such number as that, and those are to balance both the debit and credit side, but only part of that one side is made up of cash; it is the same in the paying teller's, and this sundry list, on which is a number of sundry items becomes part of his cash to

be entered as a sundry charge; it is not cash but it becomes part of his cash; in order to make up his proof that total has to be correct, and those checks are held as cash.

By the Court: Q. Well, whose checks are they? A. The checks of the depositors, the checks that have not been charged to the depositors' accounts; instead of being charged to their individual accounts they are held in the cash and become part of the teller's proofs; instead of becoming part of the individual ledger proof they become part of the teller's proof, never having reached the bookkeeper.

Q. Now with respect to those uncharged checks, are you telling us the practice that existed in the Roseville Trust Company after they began to pay but not charge checks, or are you telling us the practice which existed in the Roseville Trust Company before that condition began to exist? A. That practice exists in almost every bank that I know of; there are reasons and legitimate reasons for the holding of a check or a number of checks.

Q. For how long? A. For a very short time.

Q. Well, now, what was the fact respecting the holding of these paid but uncharged checks?

The Court: Let me see if I understand you. The customer comes in and he presentes a check and you cash that check. Now of course the bank loses so much cash? A. Yes, sir.

By the Court: Q. Instead of charging that check against the customer's account at once the teller holds the check, as I understand you, holds the check just as if it were the cash which he has paid out? A. That is the idea exactly.

Q. And why is that, when that is done? A. Why?

Q. I will withdraw that question. Then why did you not charge a check in the instance where you did not do so?

Q. Why there was any of a half a dozen reasons, but the principal reason, and the reason why most of the checks were held, was because the account to which that check should be charged was not good for it.

Q. Now you have said that according to legitimate practice those checks can be held by the paying teller for only a very short time; what was the practice in the Roseville Trust Company during the period you have mentioned? A. They were held forever, as it afterwards turned out; some of the checks that were turned over to him by the receiving teller were held there without ever having been charged to the account on the ledger.

Q. And can you give us a rough approximation of the extent to which there would be these checks held in the cash?

Mr. Cornish: I object; it seems to me that the question is too entirely indefinite for the witness to testify.

The Court: The witness is testifying to that which is within his own recollection. I do not see why he cannot state generally. Of course there will have to be more specific proof before there can be any charge against the defendants.

Mr. Cornish: But he is testifying to a course of practice which is of course entirely prejudicial to us, without giving

any definiteness at all to it, so that we can locate the transactions that he speaks of.

The Court: Well, I say there must be something more definite, but he is explaining the course of business now. I do not see any reason why he should not answer that question.

Mr. Stiefel: I sugest he ought to state what checks he held.

The Court: He is speaking from his personal knowledge. If you cannot speak from your personal knowledge say so.

Q. (Question read.) A. Well in the receiving teller's cash some days there would be two or three checks, might amount to ten or twelve dollars; other days there might be ten or twelve checks, amounting to sixteen or eighteen hundred dollars; I cannot give you any idea as to how many checks or what the amount was at any time; it just merely depended upon how many checks came in that had to be held, and what the amounts of the checks that came in were.

Q. Now the accumulation which you have referred to did not occur in the receiving teller's cash? A. It did not, no.

Q. Can you tell us to what extent, at any time you have in mind, these checks accumulated in the paying teller's cash, to your knowledge, give us the largest amount you know of at any one time? A. I do know that at one time there was approximately thirty thousand dollars worth of cash items, but how long that was the case, or how often a large amount such as that was represented on the paying teller's proof I don't know, because I did not handle his cash, I

merely just simply turned over the items as they came in to me; the receiving teller doesn't hold anything, neither cash or cash items, starts off the day's business with a clean sheet, with nothing on it at all, and makes up his proof at the end of the day only on the items that he has handled during that day.

Q. And what does he then do with them? A. Turns everything over to the paying teller.

Q. Now you say that on occasions while you were the receiving teller of the bank you relieved the paying teller? A. Yes.

Q. During any of those instances did you find in the paying teller's cash the so-called cash items or held checks? A. Yes.

Q. Did you find them there to any great amount, and, if so, how much, to the best of your recollection? A. The amount I didn't know because I wasn't interested in it; he made up his proof regardless of whether I handled his cash during the day or not; if he was there at the end of the day he made up the proof, and it was only when the proof came to be made up that the amount of those cash items would be of any material interest to the teller.

Q. Now at the time when you say the accumulation of these cash items reached thirty thousand, can you give us some idea of whether there were a larger number of those checks or only a few large ones making up that amount? A. A large number of checks, as I recall it.

Q. Well, a hundred or two hundred? A. I don't know, I wouldn't say there was a hundred, but there was quite a number, between fifty and seventy five—well, over fifty.

Q. Will you tell us, beginning at the beginning, who took charge of the general ledger from time to time, giving us the period? A. I took charge of it for a year or two, I guess up until 1911; after that Mr. Smith took charge of it.

Q. Now when he took charge of it where did he have the book physically when he was working on it? A. All over the bank, he might be working on it at his own desk, or in the directors room or on the bookkeeper's desk, or anywheres in the bank.

Q. Was that then right through to the end of the institution? A. Yes.

By the Court: Q. When did that commence, do you remember? A. Some time in 1911, I think it was in October.

By the Court: Q. October? A. I think so.

Q. While Mr. Smith was keeping the general ledger did any other employe of the bank take any checks or verifications of his keeping of the general ledger? A. No, sir.

Mr. Whiting: So far as you know? A. Only the cash, the cash had to be verified daily.

Q. Were you in the bank at the time of any of the examinations by examining committees of the directors? A. I was, yes.

Q. And did you observe them at work? A. I did, yes.

Q. Will you tell us whether on any occasion as far as you observed the examining committee made a verification of the individual deposits? A. Once to my knowledge.

Q. When was that? A. I think it was May, 1912, I wouldn't be positive of it, sometime around the early part of 1912.

Q. Now will you tell us on the occasion when you did see them doing that work—

The Court: What did you see?

Q. What did you see? A. Why they took the individual ledger and made a machine list of the balances as shown on the individual ledger.

By Mr. Stiefel: Q. Who did that? You say they made; did you or they? A. They did.

Q. How large an affair was this machine list? A. Oh, it was quite a long list, because we were handling, I couldn't think how many accounts we had at that time, but it was quite a list.

By the Court: Q. Well, give as an approximation, what is your best recollection of the number of accounts? A. Oh, I should imagine eight hundred.

Q. And can you tell me how many people were at work on that operation? A. Two.

Q. Were you in the bank on the occasions of the subsequent examinations? A. I was, yes.

Q. And did you see them doing that work on either of those occasions? A. I don't remember; I know positively they made it once because I was interested in it at that time, directly interested in it, rather, I was a bookkeeper and they were proving my books, and it impressed itself upon my mind because of that.

Q. If they had in your presence examined a long machine list and compared it with the ledger you would have recalled it now, would you not?

Mr. Stiefel: I object.

The Court: That is argumentative.

Q. Well, now, Mr. Thompson, on the occasions of these examinations, will you tell us what was done respecting the receiving teller's cash by the committee?

Q. Will you describe to his Honor what proving the cash means with reference to that receiving teller's book which I show you?

The Court: You are now referring to the page dated December 14, 1912.

A. December 13th, is it, or December 14th, there being two dates here; is it December 13th or December 14th you are referring to?

Q. I only gave it to you for an example to illustrate it, there is no claim that this proof was at any time incorrect, your Honor, the receiving teller's proof. A. Well, that is the debit side and that is the credit side (indicating); here is the total of individual deposits handled that day by the receiving teller, and that total is taken from the deposit tickets; underneath is the paying teller's charge, charge the paying teller with certain amount; here is the general ledger credits (indicating).

By the Court: Q. You charged the paying teller why? A. Credited the paying teller, rather, because he turns over to me this total of checks, checks that have to go through your cash. Special department credits, that is the savings department; those two being the total of deposits received that day; that amount in the savings department—

By the Court: Q. Give the figures because otherwise it would be unintelligible on the stenographer's notes. A. $58,685.96 was the total of deposit tickets on this day. $16,449.73 was the total paying teller's credit. $26,263.60 was the total general ledger credit. $298.30 was the total of savings department credits, deposit tickets.

By the Court: Q. What was the amount actually received by the bank on that day? A. In cash?

Mr. Cornish: I object unless he specifies that he recalls some particular occasion. Testimony in response to such a question is altogether too indefinite and vague.

The Court: It would be better if possible to refer to the occasion.

Q. You may refer to any examination you remember, Mr. Thompson? A. Why, I do not know what the dates were, but I know that some time after I was made receiving teller there were two examinations by the directors, and on both of these occasions they proved the receiving teller's cash.

Q. Will you tell me whether work was performed on any of the books of the bank—

The Court: One moment. I am not familiar with banking phraseology; I do not understand what proving the receiving teller's cash is.

A. Well, that has to be done every day in the week by the receiving teller, he has to prove his cash and the paying teller has to prove his.

By the Court: Q. But when the committee did the proving what did they do? A. Why the same as the receiving teller would do, ordinarily; take the different items and enter them up on either the debit or credit side of the proof, and when all the amounts had been entered, foot up both sides and see if they proved.

By the Court: Q. But when the committee came there they were all down in black and white? A. No, sir; they might have been, but as I recall it they were not down in black and white; they came there before the proof could be made, shortly after three o'clock, and at times the proof wasn't made until four o'clock and five o'clock.

By the Court: Q. Yes. A. You see the cash items on this book are just simply these, dollars, nickels and pennies, silver and gold; the rest of it is made up of figures that, well, for instance, those are the individual checks, total of the individual checks, and, as I say, these different items foot up a certain amount; the items on the credit side are supposed to foot up exactly the same amount; if they do the day's work proves, but only four of the amounts on this page are actual cash.

By the Court: Q. Specify them? A. Twenty dollars in gold; $34.35 in silver; $51.66 in nickels and pennies and $4,794 in bills.

By the Court: Q. Why does that item of 66,000 opposite general ledger appear there? A. All the accounts in here on the individual or savings ledger are what we call general ledger accounts. In other words, the total of the notes discounted and the charges to and the credits to that account are entered on the general ledger instead of on the individual ledger; there being possibly thiryt or thirty-five different accounts here on the general ledger; the total of the charges to those thirty or thirty-five different accounts is represented in that debit item $66,718.58, and the total of the credit to the general ledger account, as represented there, $26,263.60.

By the Court: Q. Does the sixty-six thousand item represent an actual transaction on that particular day? A. Yes, sir, it represents a group of charges that have gone through the receiving teller's cash.

By the Court: Q. On that particular day? A. On that particular day, to be charged to the general ledger.

By the Court: Q. Was not that then carried over from any other day? A. No, sir, that is the day's transaction.

Q. So far as you know was the receiving teller's book ever incorrect in what it showed while you kept the book, or while you were receiving teller? A. Incorrect in its proof?

Q. No, I mean was there at any time any false or irregular entries put in there while you were receiving teller? A. No, sir.

Q. Your work, as you state, was started fresh and cleaned out every day? A. Yes.

Q. According to the practice in the Roseville Trust Company and other banks that you know of, what is the relation between the figure turned over by you at the close of a day to the paying teller and the figure with which the paying teller opens up the following morning? A. Why, the figure I turn over to him today becomes part of his cash on tomorrow, part of his proof on tomorrow.

Q. I show you the book Exhibit for identification C-52 and direct your attention to the page December 13, 1912. Did you keep that page? A. I did, yes.

Q. That is your hand writing? A. Yes.

Q. Will you tell us what you turned over to the paying teller for his use the following day? A. $6,573.13.

Mr. Hinds: I offer this book in evidence; it has been marked for identification.

Mr. Cornish: I object to it.

By the Court: Q. What would that represent? A. The cash and sundry items, everything from there (indicating).

By the Court: Q. Everything from $693.12 to $4,748 inclusive? A. Yes.

Mr. Hinds: I offer that book in evidence.

Mr. Cornish: I object to the book being received.

Mr. Hinds: It has been marked for identification; it was identified by Mr. Odell.

Mr. Cornish: I object to the book being received in evidence on the ground that the identification by Mr. Odell is not sufficient.

The Court: But this witness has now identified it; he says that it was kept by himself.

Mr. Stiefel: Then I would like to cross-examine before it is marked.

The Court: You may, of course.

CROSS-EXAMINATION by Mr. Stiefel:

Q. Are all the entires in that book in your hand writing? A. That I don't know.

Q. On that page you were examining a few minutes ago? A. Yes, all the entries are in the handwriting—

Q. Look at that page you were examining a few minutes ago. A. Yes.

Q. Are there not some entries on that page that are not in your hand writing? A. December 14—yes, there are.

Q. Who made those entries?

Mr. Munroe: What year is that?

A. 1912. Miss Hicks, the stenographer, made those entires.

Q. Turn to the next.

The Court: That is the first column on the page called December 14, 1912; all the other figures are yours?

A. Yes.

Q. Turn to the next page.

Mr. Hinds: We will concede your Honor, that that column throughout the book is made by Miss Hicks or some other person, if that will save time.

Q. On the last page in the receiving teller's proof, is that in your hand writing? A. It is, yes.

Mr. Stiefel: I don't think the book ought to be offered; I think those parts of the book that are in his handwriting.

By Mr. German: Q. Did the stenographer make those entries under your direction or under your supervision? A. She did, yes.

By Mr. German: Q. In your presence? A. Why, I don't know as she did, no; sometimes she did and sometimes she didn't; I might say that those figures there signify nothing in the proof.

By Mr. Cornish: Q. What period does the book cover? A. April 9, 1912 to May 27, 1913.

By Mr. Cornish: Q. And was that book kept by you during all that period? A. It was not, no, sir.

By Mr. Cornish: Q. When did you last see this book? A. Oh, I don't know, about a year ago I guess.

Mr. Cornish: I think it is admissible insofar as the figures kept by him are concerned, but not any further.

The Court: Well, I should imagine that in this case there are two questions. The first question is, is this a book of the bank; I take it that the directors are bound by their books. The second question is, are these entries in these different books the entries of the witness. Those are the two

questions. It may be that if the witness has not made the entries, and they rely upon any of the entries, they can only do that to the extent that the witness himself has made those entries; they may have to call, or account for the absence of the person who made the other entries, if they want specifically to charge anybody with any particular items, I do not know how that is, but I take it that this witness is perfectly competent to identify this book as one of the books used in the bank, and that it is evidence to that extent.

Mr. Cornish: Insofar as he identifies the figures.

The Court: Well, I think he can identify the book as a book used in the bank. What the effect of that will be is a different thing. When it comes to the question of specific figures it may be necessary to call the person who made those figures.

Marked Exhibit C-52.

DIRECT-EXAMINATION by Mr. Hinds:

Q. No I show you a book marked for identification C-46 and ask you if you know what that book is? A. Paying teller's proof book.

Q. Turn to page December 14, 1912, and tell me whether you recognize the hand writing? A. I do.

Q. Whose hand writing? A. Jennings'.

Q. The paying teller? A. The paying teller, yes.

Q. Is that true throughout the page? A. Yes.

Q. Are you familiar with the course of keeping

the paying teller's proof book of the Roseville Trust Company? A. Why, yes.

Q. You have kept such book yourself, have you not? A. Yes, I have.

Q. Now will you look at that page there and tell me what you find as to what the paying teller received or purports to have received from the receiving teller from the previous day, December 13th?

Mr. Whiting: I object.

The Court: I do not think this witness has yet identified this as a book which he can testify to as being a book of the bank.

Q. I will ask the witness that. I might point out that Mr. Odell has already identified all of these books because of their general appearance and because of the handwriting which he finds in each as a book of the bank, but I will ask the witness again. Do you recognize this book as the book which was in use in the Roseville Trust Company? A. Yes, this is the paying teller's proof book that was in use in the bank.

The Court: Do you want to cross-examine?

Mr. Whiting: I make this suggestion, your Honor, it seems to me that we ought to be entitled to cross-examine the man who kept that book.

The Court: Well, as I say, the question of whether they can raise up a specific liability on any particular figures made by a man who is not called as a witness, is one that I will reserve for future consideration; but if this was one of the books in the office and was open to the inspection of the direc-

tors why it seems to me that it is competent for that reason. It is competent to offer the book as a book of the bank; what its effect will be I do not know, but if you want to cross-examine you may do so. One of the allegations is that these gentlemen did not pay enough attention to the affairs of the bank, they did not examine the books with sufficient particularity; now they are producing these books, and whatever is in them, if the entries are genuine, would to a certain extent, I take it, bind the directors who ought to have examined them.

Mr. Whiting: I have this thought in mind. It is very apparent that somewhere there was deception practiced in the keeping of the books. It is also a matter of inevitable conclusion that directors can be deceived as well as other people. Now the point I have in mind is this, if the books all go in and the record is fixed up satisfactorily to the complainants, and we have not been confronted with the man who kept this book, who in my judgment must have been in league with Mr. Smith, then it seems to me we are foreclosed from a very important privilege that ought to be extended to us, and that is why I raise this point at this time.

The Court: The only question for me to consider now is whether or not the books are evidence for any purpose, and it seems to me very plain that this particular book, being identified by this witness as a book kept in the bank during his time, constantly

seen by him, constantly referred to by him, is properly put in evidence.

Mr. Stiefel: I would like to ask a few questions along the lines your Honor indicated at the end.

By Mr. Stiefel: Q. You heard the Court say that you constantly inspected that book and it was constantly subject to your scrutiny; is that correct? A. I didn't constantly inspect it, no, because it was not one of the books that I kept.

By Mr. Stiefel: Q. It was kept in a different cage? A. It was kept in a different cage, yes.

By Mr. Stiefel: Q. Are you sure that particular book is the book that was kept there during that period? A. Positive.

By Mr. Stiefel: Q. By what reason are you positive? A. Because I have seen it there.

By Mr. Stiefel: Q. That particular book? A. Yes.

The Court: That is what I meant by inspected; I did not mean examined in detail; I meant seen by you.

By Mr. Stiefel: Q. Would you look at the footings there at any time in the course of your practice? A. No, sir, not at the footings, no.

By Mr. Stiefel: Q. Would you look at the items with which you had charged the teller who kept that book, from day to day? A. Why, there were different items on the book that I would have to refer to from time to time; he charges me with a certain amount; if I had a difference I would have to verify his charge and inspect the book in verifying it.

By Mr. Stiefel: Q. When you inspected the book for the purpose of verification would you

find the book that you looked at actually in the bank there to contain correct entries? A. Why in some cases they were not correct, because if they had been correct I wouldn't have had a difference, a listing of a check or something like that, a check might be listed incorrectly, it is done every day in the week, but as far as the proofs were concerned, the footings, and all that sort of thing, I wasn't interested in them and didn't inspect them to that extent, merely the items in which I was interested did I look at, and it was because of such reference to the book that I am able to positively identify it.

By Mr. Cornish: Q. In regard to the page concerning which you are questioned, you did not make those entries? A. No, sir.

By Mr. Cornish: Q. You do not know who did make them, or when they were made? A. I know who made them, but I don't know anything further than that.

Mr. Hinds: I will offer the book in evidence.

Marked Exhibit C-46.

Q. Now I turn to the page I have just referred to, December 14, 1912, and I ask you to tell me what you find in the column headed "Checks paid Roseville Trust Company"? A. Why there is a figure there that might be seven or it might be eleven thousand one hundred and twenty-nine dollars and eighty-seven cents.

Q. And under that figure? A. Nothing.

Q. Well, now, what does that indicate to you according to the practice of keeping that book? A. That was the total amount of the checks paid over the counter that day.

Q. And will you say whether or not that column has been kept in accordance with the correct practice of keeping that book, as it obtained in the Roseville Trust Company in respect to there being no further entries on that page?

Mr. Stiefel: I object, if your Honor please. There is no proof here that this witness is in a position to say whether that was the correct practice or not; he casually examined this book, as I understand it, and can identify it as a book of the bank, and Mr. Whiting's objection comes into full force and play here. Now we know it is a book of the bank. Why not produce the man who can say what the course was; this witness is asked to tell us whether a certain entry was in accordance with a certain course, and he knows nothing about that course.

Mr. Hinds: He said he kept the book for over a month, and he relieved the paying teller, and he said he is familiar with the keeping of the paying teller's proof book.

Mr. Stiefel: He was not keeping it at that time.

The Court: He is speaking as an expert, as I understand it, telling us what entries should be made in a paying teller's proof. I think the evidence is competent.

A. Why, it is optional as to whether a person puts down a total of a number of checks, or puts down the checks in detail and totals them on this page; the practice was to put the checks down in detail.

Q. Would it have been possible, according to

the practice of the Roseville Trust Company, to have verified the paying teller's proof on that date without the itemization of the figures totaled under the head "Checks paid Roseville Trust Company"? A. Possible, but very difficult.

By the Court: Q. What would have been the method? A. Somebody would have had to take all of those checks out of the files, the customer's files wherein the checks that this customer drew on his account were filed until such time as he brought his book in to be balanced; when those checks were taken out and returned to him, all of those checks would have had to be taken out and the markings on them looked into to find out checks would have been in the paying teller's cage in the first place, and, in the second place, whether they were paid on this particular day, and reconstruct the total as it appears on that page there from possibly five thousand other checks.

Q. Well, on the day of the examination all those checks would have been in the paying teller's cage, would they not, had the examination been made on the day it was, December 14th? A. They would have been made in the cage, yes, and where you lose track of them is when they get out of the cage and become part of the files in the bank.

By the Court: Q. When does that happen, the next day? A. The next day, the next morning, yes, sir.

Q. Now I show you book C-51 for identification and ask you what that book is, if you recognize it? A. Receiving teller's proof book.

Q. For what period? A. May 28, 1913, to August 13, 1913.

Q. Who kept that book? A. I did.

Mr. Hinds: I offer that in evidence.

Marked Exhibit C-51.

Q. Here is another receiving teller's proof book, C-49 for identification; did you keep that book? A. Part of the time, yes.

Q. Do you recognize the hand writing which is other than your own? A. Yes.

Q. Which is—A. Mr. Jennings' and Miss Hicks'.

Q. Was that a book in use by the Roseville Trust Company? A. It was, yes.

Mr. Hinds: I offer that book in evidence.

Mr. Whiting: I make the same objection.

Marked Exhibit C-59.

Q. Now I show you Exhibit for identification C-50, and ask you what that is? A. That is a receiving teller's proof book.

Q. Is that kept by you? A. No, it was not.

Q. Do you recognize the hand writing? A. I do, yes.

Q. Whose? A. Mr. Jennings'.

Mr. Hinds: I offer that book in evidence.

Mr. Whiting: I make the same objection.

Q. Is that a book that was in use in the Roseville Trust Company? A. It was in use.

Marked Exhibit C-50.

Q. What other books did you keep, Mr. Thompson? A. During the course of the bank's existence?

Q. Yes? A. Why, I guess I kept most of them.

Mr. Hinds: If your Honor please, we find there are a number of books we would

like to have identified by this witness, and perhaps it would be more convenient to have it done during the recess.

The Court: Yes, or after 4 o'clock.

Q. Can you tell us who reconciled the accounts of the Roseville Trust Company in its depository banks while you were in the employ of the Trust Company? A. Mr. Smith and Mr. Jennings, I believe Mr. Jennings did it at the same time also.

Q. When Mr. Smith did it was it the practice for Mr. Jennings to do it also, or was it one or the other? A. One or the other.

Q. When one did it can you tell me whether any other person did it, according to the practice, was it the practice of more than one person to reconcile the accounts in the depository banks? A. No, either Mr. Jennings or Mr. Smith would do it unassisted.

The Court: Will Mr. Jennings be called as a witness?

Mr. Hinds: Yes.

Q. Now, during the years 1912 and 1913 can you tell me whether or not Mr. Jennings at any time reconciled the accounts in the depository banks?

The Court: Why do you not let Mr. Jennings speak for himself?

Mr. Hinds: We would like to have this cumulative evidence on this certain critical point.

The Court: Well, if this witness knows. If he is speaking of a general practice, that is one thing; if he is speaking of specific acts from personal knowledge, that is another; for instance, if he stood over Mr. Jenning's shoulder and seen him do it

why there could be no doubt that he would be a competent witness to testify as to the fact.

Mr. Clark: Might we mention here, if your Honor please, that our witnesses, so far as they consist of the former employees or officials of the bank, are different from the ordinary complainant's witnesses, in that to a large extent, we do not know what they are going to say, and to some extent they may be adverse.

The Court: Yes, but still the rules of evidence are the same.

Q. Well, can you answer that last question? (Question read.)

The Court: The witness must speak from personal observation; if he saw Mr. Jennings do this he can testify to it.

A. I saw Mr. Jennings reconcile the statement from our corresponding banks a great many times, but whether it was during 1912 or not I don't know, 1912 or 1913, I don't know when he did it, but I know it was quite a common practice for him to do it at different times.

Q. Now on the occasion of any of the examining committees' examinations did you observe them reconciling depository bank accounts? A. Why, they couldn't reconcile depository bank accounts on the day of their examination; all they could do, and I believe all they did do—

Mr. German: I object to this answer because it is not responsive to the question. He asked whether he saw it.

Q. Tell us what you saw them do? A. Take off the balance as shown on the general ledger of the corresponding banks.

Q. Anything further than that? A. Nothing further.

Q. Now about what time of the day did the examining committee arrive on any occasion that you can recall? A. Anywheres between a quarter of three and a quarter of four.

Q. That was the usual time of arrival? A. Yes.

Q. At the time they arrived had the work on the books of the bank been done for the day? A. No; some of it had; a great amount of work has to be done on books of the bank after the bank closes.

By the Court: Q. How long does that take? A. Well, it takes anywheres from, well, it is all according to whether you prove or not, sometimes it could take you fifteen minutes to do the same amount of work as it would take you the following day two hours to do it, because of a difference that you have found.

Q. As to the general ledger, can you tell me whether or not Mr. Smith was at work on the general ledger after the arrival of the examining committee; any time that you recall?

Mr. Cornish: I object, unless the witness can specify some particular occasion; it seems to me the evidence is too vague and indefinite.

The Court: I do not suppose anybody could recollect a particular occasion after so many years have gone by.

Mr. Cornish: Of what use is the evidence unless he can identify it with some occasion?

The Court: It may not be of much use;

if the witness can recollect that the act was done, it is not absolutely necessary that he should be able to tell the precise day and hour on which it was done.

Mr. Cornish: It puts us in the position of not being able to lay hold of any specific act.

The Court: That will be a matter of argument.

A. The work had to be done after the examiners came into the bank.

Q. And was that true in the instance of each examination that you saw them make? A. Yes, every day in the year, whether examination was made or not the entries in the general ledger couldn't be made until considerably after three o'clock.

By the Court: Q. Well, there had to be a report, as I understand it, of the receiving and paying teller, did there not? A. Yes, that was part of the proof of the general ledger.

By the Court: Q. How about the bookkeeper? A. His total deposits and total checks charged to the accounts were part of the receiving teller's proof, but other entries had to wait until practically everything in the bank was completed.

By the Court: Q. In other words, as I understand—if I am wrong, I may be corrected, but as I understand, the purpose of the general ledger was to give an account, a summary of the day's transactions. Is that the way counsel understand it?

Mr. Hinds: No, your Honor, that is not quite correct. Then general ledger is a book containing in succession a statement

of the condition of the bank, its assets and liabilities, day after day; that is, any day you open the general ledger you will find there a complete comprehensive statement of assets and liabilities; then in between each of those columns day by day you will find debits and credits, indicating the changes in any given asset and liability from one day to the other; that is the book which summarizes all other books of the bank and shows the condition of the bank.

The Court: Then I will amend that by saying—if I am wrong I want you to correct me—that now my understanding of the purpose which the general ledger was intended to subserve was to give at the close of each day a résumé of the bank's condition on that day, and as a part of that résumé to indicate the bank's transactions on that particular day; is that right?

A. That is the purpose of it, it is a daily trial balance.

Q. On the occasion of any of those examinations did you know there was to be an examination before the committee actually walked into the bank? A. I didn't, no.

By the Court: Q. The committee, as I understand, came at unexpected times? A. Yes.

By the Court: Q. That is to say, they did not announce before-hand that they were coming? A. Not to me.

By the Court: Q. Well, as far as you know? A. As far as I know they did not, no, sir.

Q. Was there any other book of the bank other than the general ledger wherein the accounts of the depository banks were kept? A. No.

Q. Now you testified at some length a while ago about checks which were paid but not charged; you were not then referring to checks which were paid and indicated over-drafts on the ledger, were you? A. No, I was not, those were charged, anything that goes on the ledger and creates an overdraft is charged.

Q. I just want to make it clear that there is a group of overdrafts as well as uncharged checks. What did the members of the executive committee do in the bank, as you observed them?

Mr. Stiefel: First find out whether he had any opportunity to observe them.

The Court: I do not see how that question can be answered unless you refer to some particular occasion, because the membership of the committee was different, the same members did not always come, according to the evidence already in, the same members were not assigned the same duty. I do not see how this witness can answer such a question.

Q. I will withdraw that question and divide it up into a number of questions. I thought I would perhaps save time. During the year 1913 did any member of the examining committee come to your desk and look over your book?

Mr. German: Do you mean examining committee?

Q. Executive committee, other than at examination time?

Mr. Stiefel: If your Honor please, this is a peculiar question. Did any member of the executive committee come to you except at examining time?

Mr. Hinds: There may have been some instances where a member of the executive committee was on the examining committee and I wish to exclude that.

The Court: Put your question a little bit more plainly.

Q. Except in connection with regular examinations by the examining committee, did any member of the executive committee during the year 1913 come to your teller's desk and look over your work? A. No, sir.

Q. Did that occur at any time while you were a teller of the institution? A. Not to my knowledge.

Q. Did any director ever come to your desk, except at examination time, to look over your work or count your cash, or to make any other investigation? A. No, sir.

Q. How often, if at all, did any of the officers of the bank, other than Mr. Smith, come to your—

The Court: Well, that is very indefinite. What do you mean by officers of the bank?

A. I mean the president and vice-president or the second vice-president?

The Court: Well, that is more definite.

A. How often did they come?

Q. If at all? A. They never did.

Q. So far as you know was your cash ever counted, except by the examining committee or by Mr. Smith or one of the subordinate employees of the bank? A. My cash was never verified to my knowledge only by the examining committee and by the State Examiners.

Q. And when you say by the examining committee you mean at examination time? A. At examination time.

Mr. Hinds: We had intended to bring out from this witness, as the person knowing of the particular entries, certain of the irregularities, but I think your Honor's suggestion is a good one, we will summarize them at one time by an expert, and we will have to re-call this witness for mere identification, other than that we are ready to have him cross-examined.

CROSS-EXAMINATION by Mr. German:

Q. What had been your business previous to to your employment at this Trust Company? A. Assistant bookkeeper in the Federal Trust Company.

Q. How long had you been such? A. Oh, I don't know, probably a year.

Q. And before that time what had been your business? A. Public Service.

Q. Have to do with the keeping of books? A. Yes.

Q. What books were kept in the Roseville Trust Company when you first went there? A. Everything that was kept at any time during its history, quite a number of them.

Q. Name them? A. General ledger, individual ledger, savings ledger, collateral loan book, treasurer's check book, corresponding bank check debit and credit side books, general cash book, savings department side books, notes payable ledger, probably two or three more.

Q. Are those the usual books kept by Trust Companies in this vicinity? A. To my knowledge, yes.

Q. And were the same books as were kept by the Federal Trust Company wherein you had been employed? A. As far as I know, yes—no, with the exception of the savings department books, they don't have a savings department there.

Q. Was there any irregularity in the keeping of these books by any employee to your knowledge, while you were an employee of the bank? A. While I was an employee of the bank?

Q. Yes. A. No.

Q. You understood my question, did you? A. I did, whether there was any irregularity in the keeping of the books while I was an employee of the bank.

Q. Yes. A. I didn't know of any.

Q. Was there any irregularity in the manner of the keeping of these books or any of them while you were in the employ of the Trust Company? A. Yes.

Q. What? A. Why, the holding of checks in one case would be irregularity, holding of the sundry items for the length of time that they were held.

Q. Those are two; now what else? A. Certification of checks.

Q. That is three. What else? A. That is all I know of.

Q. How soon after you became an employee of this bank did you notice these irregularities? A. Why, I don't know, possibly a year.

Q. Did you notice it frequently or infrequently? A. Very frequently, yes.

Q. Did you call this irregularity to the attention of Mr. Odell, the president? A. No, sir.

Q. Why not? A. Why should I?

Mr. Hinds: If your Honor please, I object as immaterial to any statement by this witness as to his reasons, certainly the state of his mind is not either material or relevant, whatever may have been the condition of his mind.

The Court: It was perfectly proper to ask whether he had done it.

Mr. Hinds: Yes, but the reasons.

The Court: Why do you think that the reasons why he did not do it are material?

Mr. German: Well, I won't press the question now.

Q. Did you call the attention of these irregularities to either one of the vice-presidents? A. No, sir.

Q. Did you call these irregularities to any one of the executive committee? A. No, sir.

Q. Did you call these irregularities to any one of the examining committees? A. No, sir.

Q. Or to any one of the directors? A. No, sir.

Q. Or to any one of the State Examiners? A. No, sir.

Q. Were you present when the State Examiners made their examinations? A. I was, yes.

Q. Did they seem to make them in a thorough manner?

Mr. Clark: Now, if your Honor please, I object to that.

The Court: What difference does that make?

Mr. German: If your Honor please, as far as I am concerned, independent of the statement made by counsel that the directors cannot hide behind the State Examin-

ers, nevertheless, I intend, as far as my client is concerned, to insist that these examinations were to be relied upon by the directors, particularly my client.

Mr. Stiefel: I want to ask the same question. I feel, your Honor, that if the bank examiners made in point of fact, a thorough-going, critical examination through experts, expert examiners, whose services were paid for by the board of directors or by the bank through the board of directors, and this fact was known to the board of directors, to any of the directors, it is a material circumstance in this case. In my opinion it goes further, beyond that, but it is a material circumstance in this case. It does not exonerate the board of directors from attending an examining committee to make a proper examination, it does not exonerate the examining committee from performing their duty, but if they performed their duty so as your Honor would have performed it, if you were a member of that examining committee, and discovered nothing, and so reported to the board of directors, and if the experts employed by the State and paid for by the bank discovered nothing and so reported to the board of directors, then the question of liability has to be tested not by any hard and fast statement, or dictum rather, in any report of any case in this State, but has to be determined by the application of common sense and the principles of law to this question, were they guilty of negligence. Your Honor

cannot, I think, exclude from an examination of this case what was actually done by the State Examiners, what was reported to the board by the Commissioner of Banking and Insurance as a result of that examination, and what the board conceived they were getting from these examiners; I think your Honor cannot exclude that; therefore I think it is proper to ascertain, if your Honor please, whether or not there was an examination by the examiners that appear here.

The Court: But when you ask the witness the question was that examination thorough you are asking his opinion on the subject.

Mr. German: I will withdraw the question.

The Court: I am not trying the question of whether the examination was thorough; if I were, I could not substitute the witness's opinion for my own, I would have to know what the facts were.

Q. Were you present when the State Examiners came to examine the bank's affairs? A. I was, yes.

Q. And how long were they examining the affairs at each examination, so far as you now recollect? A. Why, I think one examination was made and completed in a day, and another examination took two or three days.

Q. What did the Examiners do in examining the bank's affairs, so far as you remember?

Mr. Clark: Now, if your Honor please, I suggest to your Honor that, in the first

place this is not cross-examination; that this whole matter, since it is one on which the defendants are going to lay considerable stress, should be brought up in a more orderly manner upon the hearing of their own case, at which time we should be glad to present to your Honor both reason and authority why the discussions with regard to the bank examiners and their performance is not relevant in this case, but it seems to me, if your Honor please, that under no circumstances can it be brought in at this time on the theory of cross-examination of this witness.

The Court: How is it cross-examination?

Mr. German: It is cross-examination for this reason, because counsel himself asked this particular witness about the examination of the State committee.

Mr. Hinds: No, you are mistaken.

The Court: I do not understand anything was said about that; I do not think it is cross-examination.

Mr. German: And furthermore they asked this witness particularly what the bank's examining committee did.

The Court: That is a different thing altogether, the bank examining committee.

Mr. Stiefel: They also asked what was done with these books, were they lying open there and could anybody inspect them. We want to know who inspected them now.

The Court: It is not cross-examination to inquire into the acts of the State Ex-

amining Committee. When the matter is put in hereafter in your case I will consider that.

Mr. Newton: They asked if his cash were verified, and he said by the Examining Committee and by the State Board of Bank Examiners.

The Court: You can cross-examine to that extent; you can ask whether when the State Examiners came they counted the cash.

Q. Did the State Examiners count the cash? A. They did, yes.

Q. On more than one occasion? A. Every time they made an examination.

Q. Did they find it to be correct or not? A. They did, yes.

Q. What else did the State Examiners do?

Mr. Clark: Well, now, I object.

Q. How did the Examiners verify your cash as being correct? A. The same way as I would verify it every day in the week; they knew as much about verifying it as I did, if not more, they would just simply take it out of my hands and verify it.

Q. When the examining committee of the bank came around to examine the books of course you did not follow them around? A. No, sir, I did not.

Q. You don't mean to testify that you knew everything the Examining Committee did? A. I haven't testified to that.

Q. And when you say they didn't do this and they didn't do that, you mean you didn't see them do that?

Mr. Clark: I object to that as being so indefinite that the answer cannot be intelligible. What does he mean by this or that? Some occasions he said he did see and sometimes he said he did not.

Q. You wouldn't say that they did not every time examine this general ledger, would you? A. I don't say anything at all about the general ledger, I don't know if they ever examined it.

Q. You would not say that they didn't go over all of those books you mentioned as being the books of the company? A. I wouldn't say a word about it.

Q. I say you do not mean to say that they didn't? A. No, sir, I don't mean to say that they didn't.

Q. You don't mean to say that they did not examine the books in the regular manner adopted by regular examining committees?

The Court: Oh, no. There is always a difference between a question which calls for a fact, and a question which calls, in addition to the fact, for an opinion, and you have to be careful in so forming your questions as to only call for a fact, unless the witness is examined as an expert and then of course he can be cross-examined with reference to his opinion.

Q. Did you call the attention of any member of the examining committee to any books of the company that had not been examined? A. That had not been examined?

Q. Yes, that you thought had not been examined? A. I didn't know which books they had examined.

Q. I say you never called their attention to any books? A. No, because I couldn't. I didn't know whether they had examined them or not, I had nothing to do with the examination of the books other than merely the particular field that I was interested in, the individual ledger at one time when they made an examination, and to that I testified; at the two subsequent examinations the receiving teller's proof I was in charge of and they examined that.

Q. And those books were found to be correct by the examining committee, as far as you know? A. Yes.

Q. Do you know whether the Examining Committee ever found anything wrong with any of the other books? A. I do not know.

CROSS-EXAMINATION by Mr. Stiefel:

Q. Mr. Thompson, this bank was at the corner of Roseville Avenue and Orange Street in Roseville, was it not? A. Yes.

Q. And it occupied a three or four-story building there, did it not? A. The bank itself occupied but two rooms.

Q. But it occupied the first floor of a three or four-story building, did it not? A. Yes.

Q. That room was about sixty feet long, one hundred feet long? A. Oh, I don't know, I should imagine it would be about a hundred feet long, yes.

Q. And about twenty-five or thirty feet wide? A. Yes, about that.

Q. It was a corner? A. Yes.

Q. Now there was a railed-off space there, was there not, for the employees of the bank to work on the books? A. Yes, sir.

Q. And it was a cage, there was grill work and other protection work rising above the height of a man's head? A. Yes.

Q. And there were openings in this, as is usual in such cases? A. Yes, sir.

Q. And outside of this cage and in the front part of the bank was a partitioned off space where Smith's desk was? A. Yes.

Q. The directors room was in the rear, was it? A. Yes, sir.

Q. And occupied part of this hundred feet? A. Yes.

Q. Did you ever see any of the directors come to the bank there and talk to them during banking hours? A. Yes, sir.

Q. That happened quite frequently, did it? A. Yes, sir.

Q. Did you see Mr. Odell there nearly every morning? A. Yes.

Q. Would you speak to him? A. Yes, sir.

Q. Would he walk inside of the cage? A. No, sir.

Q. He would speak to Mr. Smith? A. Yes, sir.

Q. Did he ever speak to you and ask you any questions about the bank? A. Oh, I suppose he did, yes.

Q. You don't recall any specific question? A. No, I do not.

Q. But he would speak to you about the matter occasionally? A. Oh, about some particular thing that he might want some information from me on.

Q. And you would give him the information? A. I would, yes, sir.

Q. How frequently did this happen? A. Might happen every day for a week, and it might not happen for a month, it all depends on what he wanted to find out.

Q. Mr. Fairlie came there practically every day, did he? A. Very frequently.

Q. The same character of conversation between yourself and Mr. Fairlie? A. No, I wouldn't say so; Mr. Fairlie, I think I had very, very few conversations with Mr. Fairlie as to any of the bank matters.

Q. His dealings would be with Mr. Smith? A. Yes, sir.

Q. You gave a bond to the bank, did you not? A. I did, yes, sir.

Q. That bond was in what sum, to secure what sum? A. I don't know whether it was five or ten thousand dollars.

Q. Now you stated that you were impressed by the examination of your books on the occasion of one examination by an examining committee; you remember that statement? A. Yes.

Q. When was that, can you tell me; May, 1912 did you say? A. I think it was somewheres around there.

Q. And you associate that with the making of this list from the depositor's ledger? A. Yes.

Q. It is that which fixes it in your mind? A. Yes.

Q. And you say you were impressed by the examination of the books; was it a careful examination of your books? A. Why it was careful, yes, but that wasn't what I meant by being impressed by it; I meant that it was done, and the mere fact that I was interested in whether the ledger proved or not did impress it upon my mind.

Mr. German: I move the last part of that answer be stricken out because it is not responsive to the question.

Q. There was nothing wrong with your book on that day, was there? A. No, sir.

Q. When did you first discover, Mr. Thompson, that checks were being held in cash or held as cash and were not being charged on the books of the company, according to good banking practice, can you tell? A. Why I think the first definite idea I had was when I was made one of the tellers, when I was made receiving teller.

Q. Were the checks then kept in your custody as receiving teller? A. For one day, the current day.

Q. And then they were passed to whom? A. To the paying teller.

Q. And would stay in his custody? A. Yes, sir.

Q. Well, how did you know when you became receiving teller and they only remained in your custody one day that this unsafe banking practice was being pursued? A. Because the checks of the same customer were coming through all the time; I didn't know at that time that these checks were being held, mind you, but I did know that I had orders to hold the checks, and the reason given was the same reason as would make it legitimate transaction.

Q. So the reason given to you at the time was a reason which would make it legitimate? A. It was, yes, sir.

Q. When did you first discover that these transactions were illegitimate? A. I think the first real discovery that they were illegitimate was when the bank closed, because I didn't know that they were all held and never charged.

Q. Even when you became the other kind of a

teller, paying teller? A. Because I was only paying teller for such a very short time that knowledge didn't come to me.

Q. You didn't have a big batch of checks, thirty thousand dollars' worth or so, that were being illegitimately held there at that time? A. I don't think so.

Q. As far as your department was concerned, if an examining committee came in they would have found everything clear in your cage? A. Yes, that is clear with the exception—it would have been clear also, but the checks would have been held in the sundries that day, and they would have found those.

Q. Only for a day? A. Yes.

Q. But the retention for days and weeks, and perhaps months and years, of those checks was not known to you during that period that you were that kind of a teller, was it? A. No.

Q. The irregularity that was disclosed to you was simply an irregularity in retaining checks for a day? A. Well, that wasn't an irregularity, it was—

Q. All right, leave it there, I understand that was not an irregularity. It was only when the bank was closed that you discovered what you have now testified to, that there was this mass of checks, thirty thousand dollars worth or more, that had been held for an indefinite period, isn't that correct? A. Yes.

Q. Only when the bank closed? A. Yes.

Q. Were you kept in the employ of the bank after it closed, for the purpose of assisting? A. I was, yes.

Q. For how long a time? A. Two or three months.

Q. And Mr. Smith, the secretary-treasurer, was he working there during those two or three months too? A. He put in some time there after he returned to the city.

Q. After he returned to the city; that was about a week ofter the bank's doors were closed? A. About a month after.

Q. He put in some time there; didn't he put in several weeks? A. No, sir, not there; he may have been at some other place, I don't know.

Q. He helped in the endeavor to discover the condition of the bank? A. Yes.

Q. Looked at the books? A. Yes, sir.

Q. And worked around the place there? A. Yes, sir.

Q. In fact he came in there every day in his automobile, as if there was nothing the matter, is not that so? A. No, sir.

Q. Didn't he come there the first few days in his automobile? A. Oh, I don't know, he may have, he may have come.

Mr. Clark: I object to this, I cannot see the relevancy of it even on cross-examination, as to whether Mr. Smith came on foot or on horse back.

Q. I am trying to refresh his recollection. Now he worked around there the same way as you did, in the endeavor to straighten this out? A. Yes.

Q. And had access to all the books that were lying there? A. No.

Q. What books didn't he have access to? A. He didn't have access to any of them only under the supervision of the State Department; none of us did have.

Q. They were lying there on the desks and on the tables, were they not? A. Yes.

Q. And you worked on them, didn't you? A. Yes, sir.

Q. Was there a man standing there looking over your shoulder all the time? A. No, I wouldn't say there was, no.

Q. Were you watching Mr. Smith all the time to see whether there was a man there looking over his shoulder? A. No, sir.

CROSS-EXAMINATION by Mr. Munroe:

Q. Mr. Thompson, you spoke of the amount of checks that were held improperly sometimes being as much as thirty thousand dollars; I gather that at different times they were less? A. Yes, sir.

Q. How would the diminution occur, how would any of the checks be disposed of? A. Why the notes that caused the holding up of the checks might have gone through to the credit of the account, making the account perfectly good, and then the checks would be charged to it; other times—oh, I don't know—that would be the main reason for the amount being diminished.

Q. When there was some credit to the account the checks might be charged to that account? A. Yes.

Q. Did Mr. Odell, while you were keeping the individual ledger for instance, did he come in at times and look it over and look over other of the books that you had under your charge? A. Oh, I believe he came in and looked over the figures on the general ledger at times, yes, sir.

Q. Do you remember anything about the individual ledgers? A. He looked over the balances, the different accounts, yes, sir, the accounts that he was interested in.

Q. And any further than that, as far as you know? A. Never any further than that, that I know of.

Q. You opened a good many of these books, did you not, that is you were there at the beginning? A. Yes, sir, I guess I opened them all.

Q. As bookkeeper? A. Yes, sir.

Q. According to your observation how much did you see me there, for instance? A. Oh, two or three times a week, some times, possibly more than that some weeks.

Q. Sometimes every day? A. Sometimes every day, yes, sir.

Q. And very frequently of course I was in touch with you about matters of the bank that you were interested in?

Mr. Clark: If your Honor please, I object to the form of the question, particularly in the light of the preceding question; the witness answered that he sometimes saw him two or three times a week, and Mr. Munroe asked him, frequently every day, and then goes on to supply an answer in his next succeeding question.

Mr. Munroe: Now I ask that the question be read.

(Question read.)

The Court: I think the question can be answered.

A. Why I don't know of any particular occasion; there might have been occasions when you did refer to different things in which I was interested in the bank's affairs, and I might say that all the directors did that; if there was some particular thing in which they were interested and I could give them the information about that par-

ticular thing probably better than somebody else could because of my having handled the transaction they would ask me about it and I would give them the information.

Q. Sometimes when Mr. Smith was not there did I confer with you about matters that I might have talked of with him if he had been there, do you recall? A. Not to my knowledge, no, because —you may have done it, you may have done it, but Mr. Jennings was the teller in charge when Mr. Smith was not there and any communications of any particular importance would be made to him in the absence of Mr. Smith; of course in Mr. Jenning's absence it would devolve upon me and I would have to handle it.

CROSS-EXAMINATION by Mr. Cornish:

Q. You said that Mr. Smith had general charge of the bank; I suppose that on each day you were busy in your own cage and occupied with your particular work most of the time? A. Yes, sir.

Q. And didn't know what Mr. Smith was doing except as you saw him go back and forth about his duties? A. Yes, sir.

Q. Then when you say that he discounted notes you are speaking from a general impression and not from anything that you saw? A. I am speaking from both, because I have seen him do it at different times, and I have brought notes to him myself at different other times, and the process of discounting notes was quite apparent to everybody in the bank, and we knew that Mr. Smith was doing it.

Q. Now it is perfectly proper for you to go to him and ask him whether you might accept a note which is offered for discount? A. Why it might

be proper but it wouldn't be sensible because I couldn't accept any note; I might take the note to him, or, as I did in countless cases, bring the depositor to him and tell him what the purpose of this depositor was, what he wanted done; that I have done a great many times; my cage happened to be the first one that they would come to when they came into the bank, and a great many times a check was handed over to my window for discount, and of course I couldn't do anything with it other than to refer to Mr. Smith.

Q. And it was proper for you to take it to Mr. Smith and ask him whether it could be accepted or not? A. Why I don't know as I ever—I may have though in a few isolated cases, but so very seldom that it has not impressed itself upon my mind, my taking notes from anybody, I would always have them bring the note to Mr. Smith themselves or leave the note there and then refer it to Mr. Smith, in a few cases, but the usual practice was to have them go to Mr. Smith, because they had to explain to him all about the note, they couldn't merely just discount it as a matter of course.

Q. Now I will ask my question again. Wasn't it proper for you to go to Mr. Smith with these borrowers and get his direction as to whether you should accept it or not, or as to whether the note should be accepted or not. In other words, wasn't he the proper man doing the business of the bank? A. Yes, he was the man that had to handle the notes.

Q. Do you know where he got his authority as to any given note that he discounted? A. Why I know that he had general authority, that is, I did not know it at the time, but I do know that—

Q. Well now, wait, that is not what I asked you. Do you know where he got his authority to discount any particular note? A. The board of directors.

Q. I understood you to say that as a general thing it was impossible to close the books on any given day before the Examiners got there? A. Why, yes, it was impossible.

Mr. Hinds: You mean examining committee?

Q. Yes. A. Before the Examining Committee got there, yes, because they reached the bank at such an early time.

Q. They would arrive there at 3:15 or thereabouts and the clerks would still be engaged in balancing up for the day? A. Yes, sir.

Q. And the clerks would complete their work, no matter how long it took, and when they had balanced would leave that work? A. Yes.

Q. And the Examining Committee would go on with their examination? A. Yes, sir.

Q. Now in connection with the checks which you said you paid some times when there was no deposit to meet them? A. Yes.

Q. At the end of the day they were passed over to the paying teller? A. Yes, sir.

Q. And there might be perfectly legitimate reasons for that? A. Yes.

Q. So that on any given day there might for perfectly good reasons be items of checks in the paying teller's proof, checks of this sort? A. In either the paying or receiving teller's proof, yes, sir.

Q. And that might have been true on any day on which the examination was made by the Examining Committee? A. Yes.

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CROSS-EXAMINATION by Mr. Whiting:

Q. These checks which were an overdraft began to come in pretty fast, did they not? A. Yes.

Q. And you paid them right along? A. Yes.

Q. You had been informed by Mr. Smith that there was some credit coming along or some note to take care of them? A. Yes.

Q. And you being receiving teller would have nothing to disturb your belief in what Mr. Smith had told you? A. No, sir.

Q. That would be found out by the paying teller who would after a time realize that these cash items were being carried too long, would it not? A. Well, he might form that impression, yes.

Q. Wouldn't that be the natural conclusion? A. Yes.

Q. That things were wrong in respect to these overdraft checks? A. Well, he would form the impression that according to good banking practice those checks were being held entirely too long.

Q. You never in your experience in the Federal Trust Company had these overdraft checks come in in such volume as they came in the Roseville Trust Company? A. I never had anything to do with the cash; I wasn't a teller in the Federal Trust Company and had nothing to do with it at all.

Q. You were paying teller, as I understand, and did not take up the subject of the overdraft checks with anybody? A. I was paying teller for only—

Q. I mean receiving teller. A. Oh, receiving teller. No, I did not.

Q. When did Mr. Jennings leave? A. Why I don't know, sometime in July of 1913 I believe.

Q. I understood you were both paying and receiving teller for the last month of the bank? A. About three weeks or a month, yes.

Q. And during that period Mr. Odell, Mr. Fairlie and Mr. Munroe came into the bank right along, nearly every day? A. I guess they did, yes, sir.

Q. And other directors the same? A. Yes, sir, I guess so.

Q. You were right there where you could speak with them, were you not? A. Yes, sir.

Q. Frequently they spoke to you? A. Yes, sir.

Q. Asked you about different matters pending in the bank? A. I don't know, well, different things that I might know something about; they never came to me about anything of importance when there was somebody else there knew more about it.

Q. Yet during the last three weeks of the bank's existence you knew a great deal about these accumulating checks in overdraft, did you not? A. No, I did not, because there might have only been —I don't know just exactly what was there, there—

Q. I didn't ask you that; you say you did not? A. No, I did not.

Q. You were paying teller? A. Yes, sir.

Q. This matter of carrying as cash items in the cash of the paying teller hadn't ceased during the last three weeks of the bank, had it? A. No, sir.

Q. As a matter of fact if anything it was accumulating, was it not? A. I don't know that.

Q. Well, there was a large amount of it, was there not? A. That is just what I was going to tell you before; there might have only been two hundred dollars during the time I was paying teller.

Q. What do you mean by that? A. Might have only been two hundred dollars of cash items held in the paying teller's cash, because these checks that were held for a long time didn't stay in the paying teller's cash, they went out of there.

Q. How do you know? A. I know that since that time.

Q. You don't know now, do you, whether or not the overdraft checks had been taken out of the paying teller's cash during the last three weeks? A. I know that hundreds of dollars of them had been taken out before the last three weeks of the bank's existence.

Q. And for the last three weeks you do not know? A. I don't know, now, no. I could tell you by an examination of the books what there was in there and all about it, the days I know anything at all about.

Q. Won't you take the books?

Mr. Hinds: The book which I hand the witness has not been marked in evidence but is identification C-47.

Mr. Whiting: I asked the witness to point out what the status was with respect to the overdraft checks during the last three weeks.

The Court: Well, he says he has no recollection on the subject, but that he could tell you if he had an opportunity of looking at the books.

Q. Now I ask you if you will not do that. A. Why there was sixteen thousand, or sixteen or seventeen thousand dollars worth of cash items in the paying teller's cash on three days that I made up the proof.

Q. Did you discuss that subject with anybody at the time? A. No, sir.

Q. Now, specify, please, the three days to which you have referred? A. Why there is one on July thirtieth.

Q. You were paying teller at that time? A. Yes, sir, I made up the proof here.

Q. What became of those cash items? A. They stayed in the cash up until August third.

Q. As from July 30th to August 3d? A. They stayed in the cash until August 5th.

Q. From the 30th of July until August 5th? A. Yes.

Q. They were carried as cash? A. As cash, yes.

Q. And they were not cash? A. No, they were not cash, they were checks.

Q. Checks against accounts which could not pay them? A. Yes, sir.

Q. Did it occur to you that that was or was not an abnormal condition? A. Well, it might have been.

Q. I say did it? A. I don't know whether it did or not now.

Q. You do not recall? A. No, sir.

Q. Do you recall whether or not you spoke to anybody about it? A. No, sir, I did not.

Q. Do you recall whether or not during that period of seven days or whatever it was the president or vice-president or attorney came into the bank? A. No, I don't remember whether they did or not.

Q. But you do know that you did not speak to them about it? A. I do, yes, sir.

Q. You had instructions from Mr. Smith at that time, did you not? A. At that time and every other time.

Q. And you were acting strictly under his instructions? A. Yes, sir.

Q. And you say that on the particular day to which you refer, or the particular period, there was some sixteen thousand dollars worth of this worthless paper in the cash; is that right? A. I didn't say worthless, because I don't know it was worthless, neither then or now, I don't know what that sixteen thousand dollars was.

Q. You knew the accounts could not pay it? A. I don't know what the sixteen thousand dollars was made up of; I know that the general character of those items there was checks which were being held for some one of a half a dozen reasons.

Q. Now give us some one of the half-dozen reasons for which those specific checks were held in your cash while you were paying teller? A. Why the major reason, as I have testified before, was because the accounts as shown on the ledger did not show sufficient balance to pay the check.

Q. Yet the checks had been paid by the paying teller at that time, had they not? A. Yes.

Q. And you were the paying teller, were you not? A. Yes.

Q. And they were carried in the cash of the paying teller? A. Yes, sir.

Q. And you were the paying teller? A. Yes, sir.

Q. So you knew they had been paid and there wasn't money in the accounts of those men to pay them? A. Yes, sir.

Q. Can you give us any other reasons why they were so carried; you said one major reason was that the accounts would not stand their payment; what other reason was there? A. I can't think now, but—

Q. You said there were half a dozen? A. Yes, and I still say that, but I am just trying to think what they are, the other reasons in holding them in the receiving teller's cash; there is reason for lack of a signature, or something like that; sending back a check to a bank from which you have received it; there are a dozen reasons why that is done; holding it, for instance, it is a customer that you know would do a certain thing, for instance, date his check ahead, or something like that, you will hold that check until such time as you could get his authority to pay it.

Q. Those might account for some of them? A. Yes.

Q. They would not account for the great bulk of them? A. Yes.

Q. It was because there wasn't money enough in the account to pay them? A. Yes.

Q. There came in there dozens and dozens of checks while you were paying teller from the Intercity Land & Securities Company, didn't there? A. I don't know as there came in one.

Q. You don't? A. No, sir.

Q. Would your books show or refresh your memory in any way? A. No, sir.

Q. You do not recall many checks of theirs coming in which could not be paid? A. Yes, I do recall, I do recall a great many of them coming in, but whether any of them came in during that five days or during the time I was paying teller I do not know.

Q. They had been coming up to the time you began to act as paying teller? A. Intermittently, yes.

Q. Pretty often, didn't they? A. Why, yes,

they came in pretty frequently, yes, and a great many of them charged to the account.

Q. And a great many of them were not? A. Were not, yes.

Q. Thousands of dollars worth? A. I don't know what the amount was, haven't any idea.

Q. You wouldn't say it was less than thirty thousand, would you? A. I wouldn't say what it was, I haven't any idea.

Q. And so about Mr. Armstrong's account, dozens and dozens of those checks kept coming along that couldn't be charged? A. Yes.

Q. That occurred while you were receiving teller? A. Yes.

Q. Some of it occurred while you were paying teller? A. Yes.

Q. And many, many, many checks came in from other accounts of the same nature, didn't there? A. Yes, sir.

Q. With all this vast accumulation of payment of overdraft checks did it never occur to you that it would be wise to talk to somebody besides Mr. Smith about that situation? A. No, sir.

Q. Never occurred to you? A. No, sir.

Q. You realized it was abnormal, did you not? A. Why, I—

The Court: Well, he says he did not.

By Mr. German: Q. The witness spoke of discounting notes; you do not mean to use the word in any technical sense when you say that, do you? A. Why that is the usual way the practice is called; a trust company I believe purchases a note, but it is usually called discounting it; you take a paper and charge so much for holding it.

The Court: It is not purchased at all, it is discounted.

By Mr. Stiefel: Q. Was the practice the same in the Roseville Trust Company as in the Federal Trust Company? A. Yes.

The Court: That does not make any difference. You cannot make a thing different by calling it by another name.

CROSS-EXAMINATION by Mr. Congleton:

Q. You have testified that there was this sixteen thousand dollars of checks you were carrying in your cash until about August fifth? A. Yes.

Q. I would be interested to know how that got out of your cash on that date? A. I don't know.

Q. They were good? A. I don't know.

Q. Won't your book tell you anything? A. It merely tells me they went out; Mr. Smith was paying teller that day.

Q. Does your book show to whom you would turn them over?

Mr. Hinds: He said Mr. Smith was paying teller the day they went out.

Q. Mr. Smith was paying teller? A. Yes.

Q. What were you doing that day? A. Probably receiving teller; during the time, during the very short time I was paying teller Mr. Smith did a great part of the work, because at that time there was to much work for one man to handle and he assisted me to a very great extent.

Q. Did he make up the proof on August 5th? A. Yes, sir.

Q. And you had made it up on August 4th? A. Yes.

Q. Did you make it up on August 6th? A. I think I—

Q. Will you please look at the book and see? A. He made it up on the third, fourth, fifth, and I made it on the sixth.

Q. Well, then, when you made it up on the 6th you found that the sixteen thousand dollars of checks had passed out of the paying teller's cash? A. Yes, sir.

Q. Did you make any inquiry about it? A. No, sir.

Q. And after that date you had no further items of that character that you caried in your cash until the bank closed? A. There were some, yes.

Q. Of large amounts or small amounts? A. Small amounts.

By Mr. Whiting: Q. Do you know why Mr. Jennings left near the end of the bank's existence? A. No, sir, I do not.

By Mr. Whiting: Q. You stayed until the bank closed? A. Yes.

By Mr. Whiting: Q. Did Miss Hicks stay until the bank closed? A. No, sir.

By Mr. Whiting: Q. When did she go? A. Oh, I think about, might have been six months previous.

By Mr. Whiting: Q. She went before Jennings? Yes.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Mr. Hinds: I would like to offer this book in evidence, the one concerning which the witness has testified and which has been marked identification C-47.

Marked Exhibit C-47.

A. That is the last paying teller's proof.

Q. Now you stated on cross-examination respecting the occasions when the amount of paying teller's cash items would be diminished, that it went out because loan credits had been arranged so that accounts could be charged; you do not

know that of your own knowledge, do you? A. I do know that, yes, I do know that loans were pending, and because they were pending the checks had to be held: I know that at some subsequent time that loan was made and the checks that were being held were charged to the account.

Q. Is that true of any of the checks described on page 62 of the bill? A. As I understand it these aren't checks, they are totals of checks.

Q. They are totals of checks uncharged? A. Yes. Well, on all of these accounts checks were charged after credits went through, but not all of the checks drawn on those accounts were charged; those were the ones that couldn't be charged.

Q. How did you acquire that information? A. Because I knew that the credit was going through because I handled the credit, and I also knew that the debits were going through because I handled the debits, they came through the paying teller's cash back to me.

Q. Did you know where the notes went to? A. The notes?

Q. The notes that you referred to as having discounted so as to permit these checks to be charged?

Mr. Whiting: I do not understand the witness to have testified as I understand now your question assumes, namely, that there were notes accepted by the bank to cover all these checks.

Mr. Clark: Oh, no, only an occasional instance.

Q. In those occasional instances do you know what happened to the notes, whether or not they were regularly entered on the bills purchased book and thence into the ledger? A. I think they

were, yes, sir; I don't know because I did not keep the record.

Q. This is simply your general impression gained from conversation, isn't that it? A. No, it is my general impression gained by my knowledge of the practice that has to be followed when a note becomes part of the day's business.

Q. Your Honor, this is not re-direct-examination, but I ask your indulgence to open up one small matter which I overlooked. During the early part of your employment were you in charge of the individual deposit ledgers? A. I was yes, sir.

Q. Now I show you one of those ledgers and ask you to turn to the account of H. B. Chaflin & Company and ask you if you recognize that as an account which was kept by you? A. Yes, it was.

Q. Now will you tell us whether during the time you kept that book there was a decided drop in the amount of the Chaflin balance, and, if so, when?

Mr. Cornish: I object, the account will show for itself.

The Court: I suppose the book will speak for itself.

Mr. Hinds: I want to identify the particular item as being his.

A. There was a decided drop, yes.

Q. When did that occur? A. The average of balance on the account up to June 28, 1911, was well over two hundred thousand dollars; after that the average balance on it was, with the exception of a very short time, between September 21, 1911, and October 11, 1911, the average balance on the account was less than one hundred thousand dollars.

Q. Now you have referred to certain pages, were all those kept by yourself? A. Yes, sir.

Q. Subsequent to the fall of 1911 what do you find as to whether the balance ever became large or suffered any marked drop? A. The average balance on the account became less than $25,000.

Q. When? A. From October 13, 1911.

Q. And after that date was there any further drop or marked change in the further balance? A. No, it was about that from that time until December 12, 1911, that is the last page that is shown here.

Mr. Hinds: I offer this book in evidence.

Mr. Cornish: I object to the book. I do not object to those pages; that is a loose leaf ledger.

Q. Well, I ask you whether or not this book which you have before you is one of the books which was regularly kept in the Roseville Trust Company and in use there?

Mr. Cornish: I object.

The Court: What is the objection to that? He kept it.

Mr. Cornish: Here is an aggregation of loose leaves; now he can identify any particular page as having been kept by him, but to identify that whole bunch I think is impossible.

The Court: Well, if he cannot do it I do not think anybody can.

Mr. Cornish: I do not think anybody can.

The Court: Then the matter is incapable of proof.

Mr. Cornish: That is my point.

The Court: If any pages have been changed, are false, or anything of that sort,

that will become a matter of investigation. I will admit the book.

Mr. Cornish: May I ask him one or two questions?

The Court: Certainly.

RE-CROSS-EXAMINATION by Mr. Cornish:

Q. Mr. Thompson, those pages in there constitute the record of the individual deposit accounts, do they not? A. Yes.

Q. Each page, or each page with each succeeding page constitute one account? A. Yes.

Q. When an account was closed those pages were taken out and transferred to another ledger, were they not? A. This is the ledger to which they were transferred

Q. This is the transfer ledger? A. This is the transfer, yes.

Q. And so all the accounts in there are closed accounts of the Trust Company? A. No, sir; this Claflin account, for instance, or accounts of that nature, where the account was very active, an accumulation of sheets would take place that couldn't be made space for in the individual ledger, they would therefore be taken out, six or eight of them, and put in a transfer binder.

Q. The pages from the indivdual ledger were from time to time taken out and put in this transfer ledger? A. Yes, sir.

Q. Who did that? A. I did.

Q. Didn't Mr. Smith do it? A. No, sir.

Q. Who had the key? A. Key to this binder?

Q. Yes. A. I guess I did.

Q. Who had the key to the individual ledger? A. I did.

Q. Were all the transfers made by you? A. All during the time I was bookkeeper, yes, sir.

Q. Then if Mr. Odell wrote to the Commissioner June 14, 1910 that "The keys to the loose leaf ledger, as suggested by your representative, are kept with the Treasurer and the shifting of all leaves in the ledger are supervised by him," Mr. Odell wrote something that was not true, is not that so?

Mr. Hinds: I object, unless the witness be asked to state the facts, but to characterize somebody else's statement is entirely immaterial.

The Court: The form of the question was improper.

Mr. Cornish: I will simply ask the question if he is positive that all of this transferring was done throughout the whole period of the bank's history by himself?

The Court: You can ask him whether at that particular date Mr. Odell had the key, or whatever the fact was.

A. Why for a very short time subsequent to one of the examinations, as conducted by the State Department, Mr. Smith had the custody of the key to the individual ledger and of course having the key to the individual ledger he controlled the transfer binder to a certain extent, because you could not transfer anything out of the individual ledger into here without opening the individual ledger, but that was only for a very short time, possibly two weeks, when the key was returned to me, and I had charge of it from that time until I turned it over to my successor.

Q. And who returned it to you? A. Mr. Smith.

Q. Did he ever come to you and get it after that? A. No; you mean to retain it?

Q. No, I mean to use it occasionally? A. No, because the only use he would have for it—well, no, he didn't, unless you want me to go further than that.

Q. Go as far as you like? A. The key to a ledger such as the individual ledger is a very common one, and there would probably be a dozen of them around the bank.

By Mr. Hinds: I won't be sure that this book is marked in evidence, I do not think it has been, yet, it has no mark on it yet.

Marked Exhibit C-108.

By Mr. German: Q. Were these books, particularly the general ledger, lying around where they were open to the inspection of any of the employes of the company? A. Yes, sir.

By Mr. German: Q. There was no attempt at concealment of the books that Mr. Smith kept at any time during banking hours? A. No, sir.

AUGUSTUS R. JENNINGS, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. Accountant.

Q. And were you employed by the Roseville Trust Company? A. Yes, sir.

Q. In what capacities, and during what periods for each capacity? A. From the date of the organization in 1908 until I think July, 1913, as receiving and paying teller.

Q. Were you both during the entire period? A. No, sir.

Q. Will you state during what period you were either or both? A. No, I couldn't tell you.

Q. At any time while you were paying teller, or teller at all, did you know of the payment or certification of checks which were not charged upon customers accounts and for which there was not sufficient balance to charge them? A. Yes, sir.

Q. Will you tell us when you first learned of these instances, such instances? A. I couldn't give you any dates, no, sir.

Q. Was it some time before the bank closed? A. Yes, sir.

Q. A year or so? A. Yes, sir, further back than that.

Q. Two years? A. I would say so.

Q. Cannot you give us some approximation, even though it is not exact? A. Well, I might say two years after the bank opened, 1910, 1911.

Q. Now can you give us the names of some of the accounts on which checks were drawn but not charged? A. Because of not being good you mean?

Q. Yes. A. William C. Armstrong, Home Ice & Products, F. W. Holbrook, Miele & Bruno, Intercity Realty I think it was, J. B. Scarlett. You are speaking about checks that are not good on the ledger, irrespective of whether there was anything in the bank to take care of them, I presume?

Q. Yes. A. Mr. Foster.

Q. Is that one of the directors? A. Yes, sir; I cannot recall any others just now.

Q. I show you a list of names on page 62 of the bill of complaint, and ask you whether any of those were such as you have testified to, in addition to what you have mentioned? A. Yes, sir, they all were except this, I don't recognize this.

Q. Except this? A. James J. Frisco I think it is, James J. Fusco.

Q. Under what circumstances were these checks paid but not charged? A. You mean during the period that I was paying teller or receiving teller?

Q. Beginning at the earliest occasion? A. During the time I was receiving teller I was instructed to hold them by Mr. Smith.

Q. And during the paying teller period? A. I received them from Mr. Thompson the following day.

Q. Now what did you do with them while paying teller after Mr. Thompson had turned them over to you? A. Held them in my cash.

Q. Where, physically? A. Why in a small compartment in the paying teller's cage.

Q. What did you do with them? A. Not much, after I proved it I locked them up in the vault,

Q. With the cash? A. Yes, sir.

Q. How long did you hold them there, as a general rule? A. Held them until such time as they were taken out.

Q. While they were in your cage were they physically apart from the cash, or were they mingled with the cash? A. They were apart from the cash.

Q. The cash was kept below in a drawer? A. The cash was kept below in a drawer, yes.

Q. Where were those kept? A. Those were kept in a box that contained probably nine or twelve pigeon holes, to the left of the paying teller's cage, that is, the paying teller's desk.

Q. On the top of the desk? A. Yes.

Q. You say you held them until they were charged out? A. I said until they were taken out.

Q. How long would that be, as a rule? A. I cannot say.

Q. Did they accumulate in considerable quantities? A. Yes.

Q. To what extent? A. Well, I think I have had as high as thirty thousand dollars in there, possibly more.

Q. About how many items would that comprise? A. I can't tell you, maybe a hundred, maybe a hundred and fifty.

Q. And after that accumulation what would then happen to them, when they left where did they go, when they left your possession, your cage? A. Sometimes they were charged up to the account, some times Mr. Smith would substitute something for several items and take them out.

Q. Substitute what? A. That I couldn't say.

Q. Did he do that in your presence? A. Some times.

Q. When you did see him do it what did he substitute? A. Why I have seen a charge go through to some of the correspondents we had, Union National Bank.

Q. On what book, when a charge went through to a depository accounts? A. General ledger, Union National Bank.

Q. Who kept that? A. Mr. Smith.

Q. And how frequently would these checks first accumulate and then be taken out? A. Why they accumulated every day, and there were certain ones taken out, I might say every day, every other day or two.

Q. Do you remember having seen the examining committee of the directors come in to make an examination at any time? A. Yes.

Q. Now let us take the last one, the one in May, 1913, do you recall that? A. No, sir, I do not.

Q. Do you recall any particular examination? A. Not on a certain date I don't.

Q. Do you recall any as having been the last or the next to the last, or so on? A. No, I do not.

Q. On the occasions of those examinations at what time did the examining directors arrive at the bank? A. Usually around three o'clock or shortly after.

Q. Did you know before they came that they were expected? A. I did in one or two instances, yes.

Q. When? A. I couldn't tell you what instance it was.

Q. How long before did you get this information? A. Shortly before we closed.

Q. Well, an hour? A. Well, I would say a half hour or so.

Q. From whom? A. Mr. Smith.

Q. And then after you had gotten the information from Mr. Smith the committee would arrive, is that correct? A. Yes, sir.

Q. And had the work on the books been completed for the day when the committee arrived? A. No, sir.

Q. Entries were made after they arrived, were they? A. Yes, there were entries made after they arrived.

Q. Is that true of the general ledger? A. I couldn't say on the general ledger.

Q. Was it true of your proof books? A. Yes, sir.

Q. Now I show you Exhibit C-47 and ask you what that is? A. Paying teller's proof book.

Q. For what period? A. Running from July 1, 1913 to August 13, 1913.

Q. And during what part of that period did you keep that book? A. Until July 23, 1913.

Q. Now I show you C-46 and ask you what that is? A. Paying teller's proof book running from November 17, 1911 to June 30, 1913.

Q. Was that kept by you? A. The biggest part of it is, yes.

Q. Turn to May 21, 1913. A. Here it is.

Q. Is that kept by you? A. Yes, sir.

Q. Any of those entries made by you after the examining committee arrived? A. That I couldn't say.

Q. Assuming that they made an examination on May 21st can you say whether you made any of those entries after the committee arrived? A. I can't say I did, but I imagine I did.

Q. Isn't it true that every time the examining committee came there they came before you completed your entries on your proof book? A. Yes, sir.

Q. Look again at that May 21, 1913, proof page, and tell me if that refreshes your recollection at all as to what occurred on that date in connection with your own part of the bank's transactions? A. That is a broad question.

Q. And look also at the date before that, in the same connection? A. I noticed thirteen thousand eight hundred and some odd dollars in cash items on the day before, and there is nothing on this date.

Q. Does that refresh your recollection? A. As to what?

Q. As to what you did in connection or incident to that examination? A. It don't refresh my recollection as to what I did, no.

Q. What do those entries signify to you? A. Signifies to me that they had been taken out of the cash on the following day, May twenty-first.

Q. Can you recall whether those were taken out of the cash in the afternoon on May twenty-first after the examination committee arrived, or taken out earlier in the day? A. No, I cannot, I don't know that the examination committee was there on that day.

Q. Assuming that they were there on that date?

Mr. Cornish: I object.

(Question withdrawn.)

Q. You have no recollection whatsoever respecting that? A. No, I have not.

Q. Turn to December 14, 1912; did you keep that page? A. Yes.

Q. I call your attention to certain erasures at the bottom of the page; are those made by you? A. I don't know.

Q. Were the figures erased made by you? A. They appear to be, yes, sir.

Q. Do you find anything on that page which is not in your writing? A. No, it all appears to be in my writing.

Q. Now I call your attention to an apparent writing over of the figure after the words "Roseville Trust Company"? A. Yes.

Q. On page 634, to the right, did you make the original figure? A. I think I did, yes.

Q. Did you make the writing over figure? A. I think so.

Q. Does that refresh your recollection so that you can explain why that was done? A. No, sir.

Q. As to the figure 16,436.73, after receiving teller's debits; did you make the original figure

there, which appears to be 26,000? A. Yes, I think that is my writing.

Q. Also did you make the over written figures 16,000? A. Yes, sir.

Q. When did you make the change in the last instance? A. I can't tell.

Q. Can you say whether it was before or after the examining committee arrived? A. I can't say that; it was after I made up my proof.

By the Court: Q. Do you remember why the change was made? A. No, I do not remember the circumstances in connection with it.

Q. I call to your attention the fact that there is a column at the left of that page headed "Checks paid Roseville Trust Company," and ask if you find anything out of the way about that column? A. Only the fact that there is one total there instead of the checks being itemized.

Q. Do you find that that occurs in any other part of the book? A. Yes, very frequently on a Saturday.

Q. Now that figure has been changed also, has it not? A. Yes, sir.

Q. And the change made in your hand writing? A. Yes.

Q. Can you tell us when that was made? A. No, sir.

Q. Or for what purpose? A. No, sir.

Q. Have no recollection at all? A. No, sir.

Q. Could you by looking at other books of the bank explain to us the purpose of those changes and their significance the cash book, for instance, or the returned items book, or the general ledger? A. (No answer).

Recess.

Q. Do you recognize the book which I now hand you? A. Yes, sir.

Q. What is that book? A. Treasurer's check book.

Q. What do you mean by the treasurer's check book? A. That is an account that we had in the bank that was used to draw checks against bills purchased.

Q. Those checks were drawn by the treasurer against the institution itself? A. Yes, sir.

Q. Who signed those checks as a rule? A. Mr. Smith as a rule.

Q. Now I show you check No. 7445 and ask you who signed that check? A. I did.

Q. Did you make out the stub? A. Yes, sir.

Q. Is that stub in your writing? A. Part of it is.

Q. Is the figure 4,000 in your hand writing? A. No; the "4" is.

Q. What is the amount of the check? A. $4,-225.00.

Mr. Hinds: I offer that book in evidence.

Q. Is this one of the books that was in use in the Roseville Trust Company? A. Yes, one of the books of the bank.

Mr. Hinds: I offer this book in evidence.

By Mr. German: Q. What is the number of that check? A. 7445.

By the Court: Q. What were the original figures on the stub? A. 4225, the same as the check.

By the Court: Q. And they have been changed to $4,000? A. Yes, sir.

Mr. Hinds: If your Honor please, in connection with offering the book in evidence

I would like to read the check in evidence.

"No. 7445.

Newark, N. J., December 4, 1912.

Treasurer's check. Roseville Trust Company.

Pay to the order of E. C. Pierson Four thousand two hundred and twenty-five dollars.

(signed) A. R. Jennings,
for Treasurer."

Bearing the Roseville Trust Company paid stamp on the face, without date, and on the reverse bearing the endorsement: "E. C. Pierson. W. F. Cook, special. Pay Essex County National Bank, Newark, New Jersey or order. Security Savings Bank, O. B. Mockridge, treasurer. Essex County National Bank, Newark, New Jersey January 7, 1913."

Q. By looking at that check can you tell me the date when that check was paid? A. It evidently came to the Roseville Trust Company on the morning of January 8, 1913.

Q. Can you say whether or not it was paid after January seventh? A. Yes, sir.

Mr. Hinds: I offer that check and the book in evidence, the book is already marked for identification C-92.

Marked Exhibit C-92.

Check marked Exhibit C-109.

Mr. Stiefel: For what purpose is that offered?

Mr. Hinds: It is part of our proof, we will connect it up later.

Q. Now according to the practice in the Roseville Trust Company what entry, if any, would be made in the general cash book on the occasion of issuing a treasurer's check? A. Credited to the treasurer's account.

Q. I show you a book, can you identify that? A. General cash book.

Q. Was that a book regularly in use in the Roseville Trust Company? A. Yes, sir.

Q. It had been marked for identification C-29. Turn to December 4, 1912 and tell me whether you find any credit of $4,000 on that date? A. No, no credit appears on that date.

Q. Turn to the next page? A. No, sir.

Q. And the next? A. No, sir.

Q. Keep on turning until you find such an item, if you do find one. A. December 14th I find—

Q. What year? A. 1912 I presume, it is not marked, yes, 1912.

Q. Then it is marked on some of the pages, is it not? A. Yes.

Q. Where do you find that item on December 14th? A. Under treasurer's checks, an item of $4,000 and an item of 150.

Q. Now will you turn again to the check book as of that date and say whether you find on December 14th any treasurer's check of $4,000? A. No, sir.

Q. Do you find the check there of $980? A. Yes, sir.

Q. I read in evidence from the book already offered in evidence check of December 14, 1912, No. 7463, treasurer's check, Roseville Trust Company, to the order of George W. Worth, $980, signed R. E. Smith, treasurer; is that his signature? A. Yes, sir.

Q. And the stub corresponding? A. Yes, sir.

Q. Now turn to the general cash book and see if you find any reference to that nine hundred and eighty dollar check in the cash book? A. No, sir, I do not.

Q. According to the regular practice in Trust Companies should the nine hundred and eighty dollar treasurer's check have appeared in the cash book as a credit on that date? A. Yes, sir, it should.

Mr. Hinds: I offer this cash book in evidence, having been marked for identification C-39.

Marked Exhibit C-39.

Q. Now will you look at the teller's proof already in evidence, as of Defendant 14, 1912, marked Exhibit C-46, and I ask you after refreshing your recollection from the previous exhibits can you now explain the correctness under checks paid Roseville Company from $11,129.87 to $7,129.87. A. Why it is very evident to me that four thousand dollars worth of Roseville Trust Company checks have been taken out of the cash, and a credit of $4,000 to treasurer's accounts made on that day.

Q. Do you find any indication of the nine hundred and eighty dollar check corresponding to any entry in your paying teller's proof as of December 14th? A. Yes, sir.

Q. Where? A. Under general items, or under general, rather.

Q. What do you find there? A. Entry of $980.

Q. Anywhere else? A. On that day?

Q. On that or any other day? A. It appears also on the following day, December 16th.

Q. The same amount, $980? A. The same amount, $980.

By the Court: Q. What does that indicate? A. I couldn't say offhand; it looks very much to me as though the nine hundred and eighty dollars was put back the following day.

By the Court: Q. They are on opposite sides of the account? A. It is two different dates; December 14th was on Saturday and December 16th was a Monday; it looks to me as though this check was put through the books on the 14th, and on the 16th it was put back in the cash and something substituted for it.

Q. Look at that nine hundred and eighty dollar check and tell me if you can say from the stamp or any other markings on it when it was paid? A. I cannot dicipher that date, no, sir, there is absolutely no date on it.

Q. Now from your experience as a bank teller, and after examining the exhibits which you have just testified to, I ask you whether the paying teller's could have been reconciled on the date of the examination, December 14th, 1912? A. Reconciled?

Q. Whether it could have been proved up?

Mr. Whiting: Wouldn't it be a fair part of that question to show that the books were in that condition at the time the reconcilement is said to have been made?

The Court: You can cross-examine on that.

Q. And I assume in my question that checks have been paid as indicated in the check book. A. According to the paying teller's proof book the cash on that date proved with the general ledger.

Q. Taking into consideration the actual checks and check books, what have you to say as to whether the paying teller's proof could have reconciled on that date? A. As I already stated it is evident to my mind that four thousand dollars worth of the Roseville Trust Company checks were abstracted, and a credit made in the general ledger to offset that.

By the Court: Q. You say that four thousand dollars worth of checks were abstracted, abstracted from where? A. The paying teller's cash.

By the Court: Q. And then how was that abstraction dealt with? A. A credit was made.

By the Court: Q. Credit of what? A. Credit of $4,000 to the treasurer's account on the general ledger.

By the Court: Q. Well, what would that credit indicate? A. The credit would offset the debit of $4,000.

By the Court: Q. But the credit would indicate what? A. It would indicate that our thousand dollars worth of the checks had been taken out of paying teller's cash, instead of being regularly charged to the accounts which they should have been there was a four thousand dollar credit made in the general ledger, which would reduce the cash on that date.

Q. Now Mr. Jennings, when you first made the entry on that day in the paying teller's proof the figures for checks paid Roseville Trust Company was eleven thousand dollars odd? A. Yes, sir.

Q. And that was probably the correct figure you would say from what you have seen? A. Yes, I would say so.

Q. And then it was changed so as to reduce it by the amount of $4,000? A. Yes, sir.

Q. And that was in your handwriting? A. I think it was, yes.

By the Court: Q. Do you mean that the three 0's were in your handwriting or only that the "4" was in your hand writing? A. That is referring to the paying teller's book; you are confusing that with the treasurer's check book.

By the Court: Q. I understand you to say that the "4" was yours, and you did not say about the 0's? A. Mr. Hinds is referring to the paying teller's proof, and you Honor is referring to the treasurer's check book.

By the Court: Well, in whose hand writing, if you know, were the three 0's? A. I couldn't say.

By the Court: Q. Were they yours? A. I think not.

Q. Do these exhibits recall any facts connected with the examination by the examining committee of December 14, 1912? A. Recall any facts?

Q. Recall any of the facts or circumstances or what happened? A. No, I cannot say they do.

Q. In view of your experience, and in view of what you have just seen, would you say that the treasurer's check book could have been reconciled on December 14, 1912? By reconciled I mean found to check correctly?

Mr. Stiefel: I object, if your Honor please, I think that is a matter of argument.

The Court: In what condition, the treasurer's check, the condition in which it was at first?

Mr. Hinds: The condition in which it appears now to have been on that date.

Mr. Stiefel: There is nothing to show when that check was really issued. We are groping in the dark there.

Mr. Hinds: The date has not been tampered with, and it is in its consecutive order.

Mr. Stiefel: Well, I have in my check book dated checks 1916 when it was 1917, and I dated it the wrong day of the month. There is no proof it was dated on that date.

The Court: The presumption is that the check was good on the day it bears date, but what I do not understand is whether the reference in your question is to four thousand dollars or whether it is to four thousand two hundred and whatever it is.

Mr. Hinds: That decrepancy is merely a cumulative thing. The main point I wish to bring out is that the check itself, though dated and in its consecutive order on December 4th, was not even entered as having been issued until the date of the examination, was presented and paid a year later in the month of January; it does not, as it should appear in the cash book as of the date it was issued, but it does appear in the cash book as of the date of the examination, but not in the paying teller's proof; the paying teller's proof book has been first written correctly so as to include that amount, and then changed so as to conform to a false debit that was made on that date.

Q. (Question read) I will add to that, subject to proof later, assuming that the checks were issued on the dates when they purport to have been issued?

Mr. Stiefel: I think that ought to be proved.

Mr. Cornish: Whether it could be reconciled or not, is not that purely a question of figures and not of opinion at all.

The Court: No, I think that is rather a matter of expert knowledge. I will let that question stand.

A. It could have been reconciled on that day, yes.

Q. Will you explain how, in view of the difference between the stub and the check, and in view of the fact that the nine hundred and eighty dollar check does not appear on the cash book on its approximate date, the book could have been reconciled on December 14, 1912?

The Court: I will strike out that question it is too argumentative. You can ask him how it could be reconciled.

Q. Will you take the book and show me how it could have been reconciled?

Mr. German: May be he can do it without the book. Why not let him tell how he can reconcile it, whether with or without the book. I object to the question.

The Court: I will allow the question to be answered.

Q. I will withdraw the last question so as to introduce some thing before it. Mr. Jennings, in reconciling a treasurer's check book in order to verify the fact that a check had actually been issued, which purports to have been issued by a stub whose check has not come back at the time of the reconcilement, you would have to look in the cash book, would you not, as a part of the recon-

cilement to do it properly? A. Yes, to do it properly.

Q. Well now, in view of that fact, and in view of what you have seen in the cash book and in the check book, I ask you whether that treasurer's check book could have been reconciled not only with reference to what appears in itself but also with what appears in the cash book on December 14, 1912? A. Whether it could have been?

Q. Yes? A. Yes, sir.

Q. Tell us how? A. In order to prove the treasurer's account book the outstanding checks, the outstanding checks should agree with the balance on the general ledger of the treasurer's accounts.

Q. Is that all of the operation of reconciling a treasurer's check book? A. It is, without you get a difference.

Q. Isn't it a part of the reconcilement of a treasurer's check book to see from the cash book whether a stub which purports to show the insurance of a treasurer's check which has not returned was actually issued as shown in the cash book? A. I wouldn't say so, if your account proved, no.

Q. What would there be to prevent a check being issued for, say, fifty thousand dollars, and a stub being issued for five dollars; had that condition existed and had the stubs all reconciled you would, according to your method of reconcilement, have found it to reconcile, would you not? A. Yes, until the check came in.

Q. That check however would have shown to have been larger, would it not, had a correct entry been made in the cash book at the time of its issuance? A. Yes, sir.

Mr. Stiefel: I object. This is a case of impeaching his own witness. We have not called this witness here.

The Court: I do not see why the reconcilement could not have been made any time before the check came in; when the check came in of course there would be a discrepancy.

Mr. Hinds: If your Honor please, in the instance of an ordinary bank account, a treasurer's check account, reconcilement can be made before the checks come in only by reference to the cash book, because when the check is issued, as the witness has said, there should be an entry in the cash book showing the insurance of the check. Now in the instance here there were two checks which appears to have been issued on the stub but do not appear to have been issued on the cash book; so a necessary part of the reconcilement would have been lacking because there wouldn't have been the verification from the cash book .

The Court: You can ask him whether it was not a proper thing at the time when the check was drawn to put the amount of that tion from the cash book.

Q. I will ask that. Wouldn't it have been the proper course at the time that stub was written and the check issued to have made an entry indicating that in the cash book? A. Yes, sir, a credit to treasurer's account.

By the Court: Q. Then the impropriety consisted in not making the entry? A. Yes, sir.

Q. And at the time of reconciling the treasurer's

check book if the cash book had been consulted the error would have been discovered, would it not? A. Yes, sir.

Q. Now will you tell me whether at any time any other officer of the Trust Company was in charge of the Trust Company, other than Mr. Smith? A. Mr. Foster.

Q. When was that? A. A few months prior to the closing of the bank, I couldn't say just how long.

Q. During that period did any irregular entries come to your attention in connection with the books of the bank? A. Yes, sir.

Q. Did you report them or any of them to Mr. Foster? A. I recall one instance I did, yes, sir.

Q. What was that instance? A. That was a transaction with Mr. H. J. Bierman.

Q. What was the transaction? A. I sent Mr. Bierman a notice of a note that was over due and asked him to kindly make arrangements to take care of the same; Mr. Bierman came to my window and presented a paid check for the amount of the note, five hundred dollars I think, stating that the check was given in payment of the note; no credit had ever been made for the note; I took the matter up with Mr. Foster and I was advised to refer it to Mr. Smith on his return.

Q. Before taking it up with Mr. Foster did you look into the books? A. Yes, sir.

Q. And what condition did you find to exist? A. I found the check had been cashed.

Q. By whom? A. Presumably by Mr. Smith.

Mr. Cornish: I object.

Q. Did you report that fact to Mr. Foster? A. Yes, sir.

Q. Did Mr. Foster say anything else than that he would recommend that it be referred to Mr. Smith on his return? A. My recollection now is that he advised me to refer it to Mr. Smith.

Q. Who reconciled the monthly statement from depository banks? A. I did at certain times for a certain period.

Q. On the occasions when you did it did anybody else do it? A. No, sir.

Q. Who did it when you didn't do it? A. Mr. Smith.

Q. And when he did it did anybody else do it besides himself? A. Not that I know of.

Q. Can you tell me during what period you did it, and during what period Mr. Smith did it? A. No, I couldn't give you the dates on that.

Q. I show you a book purporting to be a reconcilement register, and ask you to state what that book is? A. I do not ever remember seeing the book, it is evidently a reconcilement of accounts with correspondents.

Mr. Hinds: Since he cannot identify it I ask that it be marked for identification.

Marked C-110 for identification.

A. I evidently have seen it, there is some of my writing in there.

Q. You say you do find some of your writing in it? A. Yes.

Q. Can you now identify it? A. Yes, I should say it is a record of the reconcilements with correspondents of the Roseville Trust Company.

Q. Is that one of the books in use in the Roseville Trust Company? A. Very evident, yes, sir.

Mr. Hinds: Then I offer the book in evidence.

Marked Exhibit C-110.

Q. By refreshing your recollection from that book can you tell me during what period you made reconcilements of depository bank accounts and when Mr. Smith made them? A. According to this I made them from August, 1911 to June first, 1912.

Q. And between those dates you find the work to be in your hand writing? A. My hand writing and Mr. Smith's, between those dates, yes, and subsequent Mr. Smith's.

Q. While Mr. Smith attended to the general ledger did any other person other than the examining committee, if such was the fact, supervise or check the work therein? A. No, sir.

Q. Did the accounts with the depository banks appear in any other book than the general ledger? A. No, sir.

Q. In making up your paying teller's proof did you ever get information with respect thereto from Mr. Smith in order to enable you to make up your proof, which you could not have made up otherwise? A. Not that I can remember.

Q. Now referring to cash items which accumulated in your paying teller's cash, and you said that they went out from the paying teller's cash, where did they go to when they went out, physically what happened to the actual papers? A. Why in some instances they were charged to accounts, and in some instances Mr. Smith took them out himself.

Q. And when he took them out were they charged to accounts? A. In some instances, others they were not.

Q. And in the instances where they were not what was done with them? A. I think they were placed in box 55.

Q. What was box 55? A. Why a sort of a private box that Mr. Smith controlled.

Q. Where? A. In the Roseville Trust Company.

Q. In the vault? A. In the safe.

Q. Did anyone else have the key to it? A. No, sir.

Q. Was the key ever in the lock during the day? A. Not to my knowledge.

Q. Do you know whether or not any of the uncharged cash items taken out of the cash by Mr. Smith were placed upon his desk? A. I have heard testimony to that effect.

Q. You don't know personally? A. No, sir.

Q. Now, Mr. Jennings, do you recall the insurance in the account of Matilda Reglin where an entry of $3,000 appeared in your hand writing on her pass book as a deposit which did not appear in the general ledger? A. Yes, sir.

Q. Will you tell us what you know of that instance? A. Matilda Reglin at that time was incompetent, and I think Mr. Congleton was appointed a committee in charge of her affairs; we had such an account on the individual ledger; she was discharged from the insane asylum and received Mr. Congleton's check in an amount something over three thousand dollars; she came to my window to cash the check; I persuaded her to leave $3,000 with the institution on deposit, and she drew the balance in cash; I made out her savings bank book, and all of the entries necessary to put the account through; Mr. Smith came out to my desk and saw the entries on my desk, and took out of the cash items $3,000 and the entries which I had made to correspond.

Q. Do you recall the instance where you drew a check upon your own account in the Roseville Trust Company of $2,000 when the account was not good for it? A. Yes, sir.

Q. Will you tell us the circumstance of that? A. That was in connection with a moving picture concern which I intended to go into; I had been to Mr. Smith and asked him about it and expected that Mr. Smith would finance the investment; I gave the check to Walter Meyer, I think his name was; previous to that I told Mr. Smith that my option expired on it, or would expire very shortly, and asked him if he would be in position to take care of it, and he assured me he would, and I gave him a note to take care of the $2,000.

Q. What happened to that check when it was presented through the exchange? A. It was paid.

By the Court: Q. You drew this check on your account, did you? A. Yes, sir, personally.

By the Court: Q. Well, then the note ought to have been credited to your accounts in some of the books? A. Surely.

By the Court: Q. Was it? A. No, sir.

Q. I will refer you in a group to the accounts of Margaret E. Garrison, Estate of Anna Goeller and Mrs. Annie or Henry C. Sander, in each of which it appears that an amount was credited in the pass book in your hand writing but did not appear in any other books of the bank; will you tell us the circumstances of those transactions as you recall them? A. What were those names again?

Q. Garrison, Sander and Goeller; those were instances where no deposit slip was found. A. Garrison I do not recollect. There were several

instances where deposits were taken in and deposit tickets were made for smaller amounts, and checks and items that were being held in the cash were abstracted to correspond with the amount.

Q. Do you recall any instance where a deposit was made, entered in the pass book, and did not appear in the bank's books at all, while you were a teller in charge of the matter? A. Yes, I think there was one of Chapman.

Q. What is your recollection about the Chapman case? A. I haven't any recollection other than the fact that I took in the deposit and entered it in the pass book; at that time I wasn't receiving teller.

Q. You were receiving teller on April 17, 1911, were you not? A. I think I was, yes.

Q. Have you any recollection of the account of A. Magnani, administrator, who had five accounts? A. I recollect the name.

Q. Do you recall the instance where large deposits were made and appeared on the pass books, but that the account was opened up on the ledger in each instance for only one dollar; have you any recollection of the circumstances of those? A. No, sir, I haven't at present.

Q. Now I show you a small book and ask you what that is? A. That is the special department ledger, Roseville Trust Company.

Q. That was a book in use, regularly in use in the Roseville Trust Company? A. Yes, sir.

Q. I call your attention to accounts Nos. 1651, 1652, 1653, 1654 and 1655, all in the name of A. Magnani, administrator of various estates, all of which appear to have been opened by a deposit on April 25, 1911 of only one dollar? A. Yes, sir.

Q. You were the teller at that time, were you not? A. Yes, sir.

Q. I also show you the pass books bearing the names of A. Magnani, administrator of the various estates, and ask whether those refresh your recollection so that you can tell us the circumstances of those transactions?

Mr. Stiefel: I object. It has not been shown that these entries in the pass books or on the ledger page are in the witness's hand writing; if they are it is competent for him to state it.

The Court: What do you say?

A. No; they aren't my hand writing.

By the Court: Q. The entries in the pass book are not in your hand writing? A. No, sir.

Q. Perhaps I better go through it, and then his recollection may be refreshed by going through it. Take the first book, No. 1651; do you recognize the hand writing of the first entry in there? A. Yes.

Q. Is that yours? A. No, sir.

Q. Whose is that? A. Mr. Smith's.

Q. You find a deposit of what amount? A. Four hundred and fifty-two dollars.

Q. And a deposit in the ledger on that date of how much? A. One dollar.

Mr. Hinds: I offer this pass book 1651 in evidence.

Mr. Stiefel: I object. There is no proof at all that that book was in the possession of the people to whom it was made out, or that it is anything except a book with those entries in it; I do not know anything about it, don't know whether the people

ever had it, don't know the first thing about it.

The Court: Well, there is nothing to show that that book was issued to the customer, yet; you may be able to show it by and by.

Q. Do you find any subsequent entries in that pass book? A. Yes, sir.

Q. Not in your handwriting? A. No, sir.

Q. In whose handwriting? A. They all appear to be in Mr. Smith's.

The Court: You will have to have Mr. Smith explain that.

Mr. Hinds: If your Honor please, may we have them marked now for identification and we will offer them in evidence when Mr. Smith comes.

The Court: I do not see why you want to offer them now.

Mr. Hinds: So that we can identify them as the books which have been testified to but not offered in evidence.

The Court: But this witness does not know anything about them.

Q. Do you recall, Mr. Jennings, while you were a teller in the Roseville Trust Company that any administrator came to your institution and opened an account with the sum of one dollar? A. No, I do not recall that.

The Court: You can prove them at the proper time.

Q. According to the practice of bookkeeping, the system existing in the Roseville Trust Company, in order to confirm the general ledger total or individual deposits, would it be necessary to

look at the several accounts contained in the book before you? A. Yes.

Mr. Hinds: I offer this book in evidence, that is the ledger showing the one dollar administrator's account.

By Mr. Stiefel: Q. Do you know whether those pages containing one dollar deposit entries, those ledger pages, were in the book there when it was in use in the bank? A. What time?

By Mr. Stiefel: Q. The time of the date of the entry or entries? A. Yes, sir, they were in use at the time of the date of the entries.

By Mr. Stiefel: Q. And the figure one dollar was there on that page in use at that time or those times? A. April 25, 1911.

By Mr. Stiefel: Q. You know that? A. From what I know of the banking business I should say so, yes.

By Mr. Stiefel: Q. No, do you know it of your own knowledge? A. No, I don't know absolutely that they were there, no.

By Mr. Stiefel: Q. You don't know absolutely that they were there? A. No, sir, I do not.

By Mr. Stiefel: Q. It is a loose leaf ledger? A. Yes.

Mr. Stiefel: Then I object to the offer of the book; there is nothing to show that those were in there at that date.

The Court: I will let it go in, counsel may argue about it later.

Marked Exhibit C-111.

Q. That is not your handwriting? A. No, sir, it is not.

Q. Now I show you bill of complaint, page 58, Exhibit E, being a list of a number of depositors

and dates and amounts, and ask you whether you recall as to any of those the circumstances of a deposit not appearing on the books of the bank? A. Yes, sir.

Q. Which one? A. Sharwell, Clossick, Cardoni, Crump, Peter Scola, Alma M. Mott.

Q. Will you tell us one by one what facts you know in connection with those transactions? A. I recollect that Mr. Scola was supposed to open an account with Mr. Smith; I don't know what the amount was; I know that it wasn't credited to his account; I might say that the same is true of all the other accounts, they were initial deposits made, the names I have mentioned, they were initial deposits made which were never credited to the account, or were not at the time the account was opened.

Q. Did it ever come to your attention that there was a lack of cash in the institution? A. Yes, sir.

Q. Tell us the circumstances of the first time you remember? A. I don't remember the first time; I know of several instances I had to send outside for cash.

Q. When you sent outside who did you send to? A. Sometimes to the Union National, two or three occasions the City Trust Company in Roseville.

Q. Now look in your paying teller's proof book as of June 30, 1913 and tell us, if you can, what the condition of the cash was on that date? A. You mean the amount on hand at night?

Q. Actual cash, approximately? A. It looks to me like about twenty-six or twenty-seven hundred dollars.

Q. And the amount of cash items? A. Forty-eight thousand eight hundred odd.

Q. Is that one of the instances where there was a lack of ready cash that you referred to? A. Decidedly so.

Q. Now when you say you sent out to the Union National can you give us a little more detailed explanation of what you did and said, and so on? A. I cannot recall any instance now, I know that on two or three occasions I was short and informed Mr. Smith of the fact that I had to have more cash.

Q. What was the smallest amount of cash you recall having had in your cage to open business with? A. I cannot say that.

Q. Did it ever get as low as. fifteen hundred dollars? A. I wouldn't want to go on record as saying it had.

Q. What is the best of your recollection? A. The best of my recollection is that on several occasions I didn't have enough to pay the checks that were coming in, I can't state any amount.

By the Court: Q. Well, what did you do? A. In those instances I informed Mr. Smith I had to have some more cash.

By the Court: Q. No, but when the checks came in and were presented before you informed Mr. Smith? A. I would naturally know before I got down to the last dollar that I would know I was going to be short, anticipated.

By the Court: Q. What you mean is that when the funds got very low then you informed Mr. Smith? A. Yes.

By the Court: Q. You did not wait until they were exhausted? A. No, sir.

By the Court: Q. Your previous answer would indicate that you had more checks than you had

money to pay; you did not mean that? A. I didn't mean to infer that, no; I meant that I would anticipate a shortage before the day was over.

Q. While you were teller did any officer of the Trust Company other than Mr. Smith ever come into your cage and look at your books or count your cash, other than the examining committees? A. Not that I can recollect, no, sir.

Q. Did any director ever do so? A. No, sir.

Q. Can you give us an approximate idea of the amount of the Miele & Bruno uncharged checks that came in and were carried in the cash, can you say whether or not it was over ten thousand dollars? A. I think it was around that amount.

Q. How about Armstrong? A. Armstrong I think was about thirty thousand or over.

Mr. Cornish: Don't the books show what it is?

Mr. Hinds: It did not get on the books, unfortunately.

Mr. Cornish: Do you expect to prove it by this witness?

Mr. Hinds: Yes.

Q. Can you give us any idea of the amount of the Scarlett checks that did not get on the books?

Mr. Cornish: I object.

The Court: No, this witness has personal knowledge and his personal knowledge is better than the books. You deny the authenticity of the books consequently you compel a resort to the personal knowledge of the witness.

Mr. Stiefel: He may have seen a check now and a check then, but I do not think it

has been proved in this case that he has knowledge sufficient to state the aggregate; I haven't heard the testimony.

The Court: I do not think there is the slightest objection to the question.

Q. (Question read). A. No, sir, I cannot.

Q. Or the Intercity Land & Securities Company checks? A. No, sir.

Q. Did they exceed $15,000, as you recall? A. I don't think so.

Q. Home Ice & Products checks, can you give us any indication of the amount of those? A. The Home Ice & Products, and Mr. Holbrook, which was practically the same concern, had a very large amount, and I imagine it was over twenty thousand dollars, to the best of my recollection.

Q. You have said that Mr. Smith in advance of the arrival of the examining committees told you that they were to come; do you recall his exact words? A. No; on one or two occasions he informed me of the fact that the examining committee were coming up.

Q. Can you recall what any one of the examining committee did on the occasion of the last examination? A. When was the last examination?

Q. May, 1913, just before you left, a month or so? A. If I knew who was the examining committee I possibly might be able to answer the question.

Q. I refer you to page 27 of the bill, Sexton, Banister, McCord, Krug and Benjamin. Benjamin has been added by an amendment. A. I think Mr. Sexton and Mr. McCord went over the cash, and I think that Mr. Bannister and Mr. Benjamin were on the notes.

Q. Do you recall whether a machine list was taken of the individual ledgers? A. No, sir, I do not.

Q. Do you recall whether that was done on any examination? A. No, sir.

Mr. Cornish: What is the answer, that he does not recall?

A. I do not recall.

Q. Have you any recollection as to what was done by any one of the examining committee in December, 1912; the committee at that time consisted of Benjamin, Mr. Sexton, Mr. Bannister, Mr. McCord and Mr. Dunn. Mr. Dunn was ill. A. I do not ever remember Mr. Benjamin or Mr. Bannister being in the cage, I think their work was confined entirely to notes; Mr. Sexton and Mr. McCord I am very sure were in the cage.

Q. Have you any recollection as to the performance of the examination as to other items than the cash or the notes, for example the deposit ledgers, collateral loans? A. No, sir.

Q. Bank accounts? A. My knowledge was confined to the paying teller's and the receiving teller's proofs.

Q. Did your duties ever have anything to do with collateral loans? A. No, sir.

Q. Did your duties ever have anything to do with notes at all? A. No, sir.

Q. What? A. I entered the notes in the bills purchased book, made out the credits, and in a great many instances drew the treasurer's checks.

Q. Do you recall any instances where notes were negotiated but not charged, did not appear on the books of the Trust Cmpany?

Mr. Stiefel: Notes of whom?

Q. Of any person; that is, where the Trust Company discounted notes or purchased bills of any persons, Miele & Bruno, for example, which did not appear on the book of the Trust Company? A. Yes, I think there was some of Bruno's.

Q. Recall any of Armstrong's? A. I think there was some of Armstrong's.

Q. Home Ice & Products Company? A. Yes, sir.

Q. Scarlett? A. I can't say about Scarlett.

Q. Any others? A. I can't remember any at the present time.

Q. What part did you have in those transactions? A. They not appearing on the books?

Q. The bills being purchased and not appearing on the books? A. None at all.

Q. What do you know about those transactions? A. I simply know that they were not credited to the accounts.

Q. For what purpose were these notes given, if you recall? A. I don't know that.

Q. Was it, for example, to take up checks which had not been charged; does that refresh your recollection? A. That I don't know, I don't know what arrangements were made with Mr. Smith as to the discounting of the notes.

Q. Do you recall whether there were any of the Intercity Land & Securities Company notes which were discounted but not charged on the books? A. No, sir, I don't remember any at the present time.

Q. Or Holbrook? A. I can't remember any.

Q. Who made these loans? A. Who made the loans?

Q. Yes, in behalf of the Trust Company? A. Mr. Smith.

Q. And what was the practice, as you observed it, with respect to previous consultation with the directors before such loans were made?

Mr. Stiefel: I object, if your Honor please, what was the practice with regard to previous consultations; it has not been shown that this witness knows anything at all about that practice.

The Court: If the witness knows how these loans were made he can state.

Mr. Stiefel: May have been made without any consultation at all.

Mr. Hinds: I intended my question to include all loans in the bank, perhaps I did not make it clear.

The Court: The proper question would have been how the loans were made, if the witness knows how they were made.

Q. I will ask you just that question.

The Court: How they were made, so far as they came under his observation.

A. I did understand that Mr. Smith was—

Mr. Cornish: I object, if he is giving his actual knowledge I have no objection.

The Court: Well, that is what I limited the question to.

Mr. Cornish: But he says "I understand;" now that leads me to believe he is giving something he heard.

The Court: The witness must speak from what he himself observed.

A. I never seen the authority for what I am going to say.

Mr. Cornish: I object to its being admitted.

The Court: Then the witness cannot testify.

CROSS-EXAMINATION by Mr. German:

Q. What was your business previous to being employed in this Trust Company? A. Banking.

Q. Where? A. Several institutions previous to this, directly previous to this I was with the Seaboard National Bank in New York.

Q. In what capacity? A. What they term as floater.

Q. And what did you do as a floater? A. All over the bank, I filled any position in the bank.

Q. Do you mean as president and cashier? A. No; I said position, I didn't say office.

Q. Well, just tell us some of the positions you filled? A. Assistant receiving teller, loan clerk, assistant paying teller, in the loan cage, individual ledgers, general ledgers, correspondence desk, foreign department.

Q. How long had you been there? A. Why, I was there about a year.

Q. What kind of bank was this, as to being large or small bank? A. Considered one of the largest banks in New York.

Q. Previous to that time what did you do? A. With the Trust Company of America, in New York.

Q. What did you do there? A. Assistant receiving teller.

Q. For how long? A. About three and a half years.

Q. What kind of a bank was that, so far as its size is concerned? A. The same.

Q. And previous to that? A. I was with the West Side Trust Company in Newark.

Q. What had you done with that institution? A. Paying teller.

Q. For how long? A. I can't tell you the dates, I don't remember.

Q. About how long? A. I should say three or four years.

Q. So that you had a number of years experience in the banking business before you came to the Trust Company? A. About fourteen.

Q. Were the books in use in the Roseville Trust Company the ordinary books in use in Trust Companies? A. Yes, sir.

Q. So far as you were able to judge were they kept in a regular manner? A. It is very evident they were not.

Q. In what respects? A. Why in respect of false entries.

Q. Well, in what book or books? A. Why in all the books.

Q. Name the book in particular? A. I might name every book in the bank.

Q. Name them? A. I don't know as my recollection goes back far enough to name every book.

Q. You say all the books, name as many as you remember? A. From the receiving teller's pass book up to the general ledger.

Q. And the books in between, how many books do you say had false entries? A. Well, all the books that were in between, probably half a dozen, more or less.

Q. When did that matter first come to your attention? A. I cannot say.

Q. In reference to your entry in the bank, when

did you notice those false entries? A. I am telling you I can't recall the exact date.

Q. As near as you can? A. Some time in 1911.

Q. You entered the bank in? A. 1908.

Q. So that you were in the employ of the bank about three years before you noticed any false entries? A. I think so, yes, sir.

Q. How did you happen to discover this first false entry? A. I don't recollect.

Q. How was it brought to your attention? A. I don't recollect it at all.

Q. Who made the false entries, if you know? A. I don't know that even.

Q. What makes you say there was a false entry? A. Because it has been brought to my attention since.

Q. In looking back what have you to say as to whom or by whom it was made? A. I cannot say who made the first false entry.

Q. Well, who made the false entries generally? A. Generally?

Q. Yes. A. Mr. Smith.

Q. Did anybody else make them but Mr. Smith? A. Yes.

Q. Who? A. I have.

Q. How many did you make? A. I couldn't tell you.

Q. In what books did you make them? A. Pass books.

Q. You mean pass books? A. Depositors' pass books.

Q. In the savings department or the general? A. Both.

Q. What other false entries did you make? A. Certifying checks that were not good.

Q. And in how many cases? A. I couldn't tell you.

Q. In a number of cases or just a few? A. A number of occasions.

Q. Well, what other? A. That is all I can recollect at the present time.

Q. Did you ever call the attention to those false entries in the books made either by Mr. Smith or yourself to any officer, director or committeeman of the bank? A. No, sir.

Q. Why not? A. Well, I can't say why I didn't.

Q. You were under bond, were you not, with the Trust Company for the faithful performance of your duties? A. Yes.

Q. How much? A. I think it was ten thousand dollars.

Mr. Hinds: I might say here it will be a matter of proof that suit has been brought on that bond.

Mr. Stiefel: And judgment recovered for how much?

Mr. Hinds: I don't know how much, it is under appeal.

Mr. Stiefel: For less than the amount of the bond?

Mr. Hinds: Yes.

Q. Was it the practice of the directors to enter the cage of the paying teller and count the cash? A. The practice?

Q. Yes? A. No, sir, not outside of the examining committee.

Q. When you say that none of these directors came in to count the cash that wasn't anything unusual, was it? A. No, sir.

Q. In fact if a director who was not on one of

the examining committee or the executive committee should come in and count your cash and look over your book you would have resented it? A. I should not allow him to do it.

Q. Why not? A. Because I wouldn't figure he had any business in there.

Q. Was it the practice in the other banks where you were employed for the directors to come into the cage of the paying and receiving teller and count the cash and look over the book? A. No, sir.

Q. So far as you could observe the examining committee of this company when they examined the books performed their duties?

The Court: Oh, no. That is the very question I have to decide.

Q. Who did you say supervised Mr. Smith's books? A. I don't think I stated.

Q. Well, who did? A. Who supervised his books?

Q. Yes, looked over his books?

Mr. Hinds: He said no one.

A. I don't know as anybody did.

Q. Didn't the examining committee? A. I imagine they did.

Q. Didn't the Banking Examiners?

Mr. Hinds: I object to that your Honor on the ground that it is not proper cross-examination.

The Court: If the witness saw the State Examiners examining any books he can state.

A. I never saw the Examiner examining any books that Mr. Smith kept.

Q. I am talking about the State Examiners now? A. That is what I am talking about.

Q. These books were all out in the banking rooms, weren't they? A. Yes, sir.

Q. Mr. Smith didn't attempt to conceal any of the books? A. Not that I know of.

Q. Did he, I ask?

The Court: Do you mean whether this witness observed him secreting them at any time?

Mr. German: Yes, as far as he knows.

The Court: You can ask that question.

A. I said not that I know of.

Q. You had access to the general ledger, didn't you, at any time? A. Yes.

Q. And Mr. Thompson did? A. Yes.

Mr. Hinds: Will you explain what you mean by "had access;" do you mean that he went to it, or might have gone to it?

Mr. German: That he might if he desired, they were open for him to do so.

CROSS-EXAMINATION by Mr. Stiefel:

Q. You spoke of Bruno's notes and Armstrong's notes and the notes of other persons which never appeared on the books of the company I believe? A. Yes, sir.

Q. And you spoke of having knowledge of that. Was your knowledge of that acquired while you were an employe of the bank, or has it been acquired since? A. Why while I was there, while I was in the employ of the bank.

Q. Did you only know of one or two notes of that character or did you know that the number of notes was large? A. In the aggregate they were rather large, as to amount.

Q. Did your knowledge come to you piecemeal,

with respect to the various notes, or did it come to you with regard to the general situation on one occasion? A. General situation as it developed and the circumstances arose that would lead me to inquire into different transactions.

Q. When did you start to make false entries? A. That I couldn't say.

Q. You cannot say the exact date? A. No, sir.

Q. Mr. Smith had preceded you, I assume? A. Yes, sir.

Q. And you were friendly with Smith at that time A. I wouldn't say friendly, no, sir, not outside of the banking business.

Q. You did not report to any of the directors that you were making false entries, or that Mr. Smith was? A. No, sir, I did not.

Q. You did not report to any of the directors, for example Mr. Foster, anything about that two thousand dollar check which you I presume had no right to draw? A. No, sir.

Q. I do not want to go into that very much, but that was a check you had no right to draw, as I understand your testimony? A. I don't think I testified I had no right to draw it.

Q. You drew it knowing you had no funds there to meet it? A. Yes, sir.

Q. You never said anything to Foster about that? A. No, sir.

Q. But you did come to him about the Bierman matter? A. Yes, sir.

Q. That is the only matter you can recall coming to him about? A. The only matter I can recall, yes.

Q. It is the only matter that you called to the attention of Mr. Foster which might have opened

his eyes to the improprieties of Smith? A. As near as I can recall.

Q. You realized if you did that, and opened Foster's eyes to the improprieties of Smith it might open his eyes to your own improprieties, did you not? A. No, sir.

Q. You did not realize that? A. No, sir.

Q. Didn't you have any idea how extensive the defalcation of Smith was? A. No, sir, I never knew until the bank failed.

Q. Had formed no idea about it at all? A. No, sir, absolutely none.

Q. You had seen him take moneys in considerable sums, had you not? A. No, I can't say I ever saw him take moneys.

Q. Well, you saw him take out of the cash which had been deposited by this depositor whom you specially named and whom you induced to make the deposit, Reglin, you saw out of that a considerable sum taken by Smith, did you not? A. That doesn't represent money, that is a substitution.

Q. Well, you knew that the proceeds of that— A. As a matter of fact on that day I didn't have three thousand dollars in the cash.

Q. Well, you didn't know that they aggregated as much as now alleged, but you knew that they ran into very large figures, didn't you? A. I imagine they did, yes.

Q. And knowing that, and knowing your transaction with the two thousand dollar check—you hadn't made that good when you spoke to Foster, had you, that two thousand dollar check? A. No, I don't think that occurred at that time.

Q. It didn't occur at that time; did it occur afterwards? A. I think so.

Q. That occurred afterwards? A. I think so.

Q. But your false entries had occurred before? A. Yes, sir.

Q. Did you advantage by these false entries in any way? A. No, sir.

Q. You did not? A. No, sir.

Q. Notwithstanding your knowledge of the extent of the improprieties of Smith, and the fact that you had made false entries, you say you went to Foster and indicated to him that here was an impropriety committed by Smith? A. No, I won't say that; I simply stated the facts in connection with the one instance.

Q. You didn't state them in such a way as to show that you knew that here was another sample of Smith's wrong doings? A. No, I wouldn't say I done it in that way.

Q. And he from your conversation seemed to think it was a matter which could be explained when Smith came back? A. I don't know what his presumption was.

Q. I ask how he explained it to you, was he shocked? A. He told me to wait until Smith came back and take it up with him.

Q. And you said you would do so? A. I don't remember what reply I made to him, I evidently did.

Q. Did you take it up with Smith when he came back? A. Certainly did.

Q. Did you report to Foster that Smith's explanation was satisfactory or unsatisfactory? A. No, sir.

Q. Didn't report back to Foster? A. No, sir, never said another word to Foster.

Q. The matter was dropped? A. Absolutely.

Q. About when was this Foster transaction? A. I can't recall the date, it was some time in 1913, possibly three or four months before the bank failed.

Q. Was it at the time when Foster was in the special employ of the bank to assist in making collections? A. Yes.

Q. Where was Smith, he was come back, where was he? A. He was outside, presumably to try and collect some of the past due paper.

Q. He would frequently go out on those errands during this period, would he? A. Yes, sir.

Q. His general ledger, the key to the whole situation, would be lying there open to the inspection of anybody? A. It would be in the institution, I don't know just where it was.

Q. You have spoken of Box 55 in the safe? A. Yes.

Q. Do you mean in a built in safe there or in a safe, portable safe? A. No, I mean a regular safe; there were certain boxes, I don't know how many, two or three tiers of private boxes right in the safe.

Q. Had you ever looked into this box before the bank was closed? A. 55? No, sir.

Q. How did you know, or how do you know that any of these checks which were improperly carried as cash got into box 55? A. I have heard it testified so at different trials.

Q. You are simply speaking of what you have heard? A. Yes.

Q. You know nothing about it. And during your connection with the bank there you didn't know the importance of this mysterious box 55? A. Simply knew it was a private box Mr. Smith had.

Q. That is all you knew about it? A. Yes.

Q. You said Mr. Smith told you a few minutes, or a little while, about quarter of an hour before the committee came that it was coming, on one or two occasions; is that so? A. Yes.

Q. You don't know how he learned that? A. Yes.

Q. How did he learn it? A. Over the telephone.

Q. Who told him over the telephone? A. Mr. Sexton I believe.

Q. Mr. Sexton, you say? A. Yes, sir.

Q. Did Mr. Smith tell you that? A. Yes, sir.

Q. You recall this very distinctly, about Mr. Smith telling you the committee was coming? A. I do on one or two occasions.

Q. What occasions were those? A. I couldn't tell you.

Q. Toward the end of your regime? A. No, I don't think it was toward the end.

Q. When you reconciled the monthly statements did the reconciliation enable you to reach a result which corresponded with that of the depository banks. In other words, were you able to reconcile your account with the depository bank accounts? A. Yes, sir.

Q. There was nothing while you were there that occurred which would not permit a proper reconciliation? A. Yes, there was on some occasions, I had to confer with Mr. Smith as to certain debits and credits.

Q. And after these debits and credits were made the reconciliation was effected, is that it? A. Yes, sir.

Q. And do you know of any occasion on which it was impossible to make a reconciliation, thus

showing there had been a defalcation? A. I couldn't give you any specific date, I know there were certain credits and certain debits that did not appear on the books, which I had to go to Mr. Smith for explanation on.

Q. When was this? A. I can't give you dates, it is pretty hard to get back the dates, four years ago.

Q. But when, toward the end of your career or beginning? A. No, sir, I didn't reconcile any accounts at the end of my career, I think I stopped that some time in 1912 and turned it over to Mr. Smith.

Q. You came to that conclusion upon inspection of that book there, is that it? A. Yes, sir, from the reconcilement book I saw here.

Q. Do you know of any occasion when you participated or went through the operations which are involved in this reconcilement, do you know of any occasion when it was necessary to make any false entries on the reconcilement book? A. I don't know of any occasions, no; I know that I have put down debits or credits that didn't appear on the books, in order to reconcile the accounts.

Q. You mean did not appear on other books? A. Did not appear on the books of the Roseville Trust Company.

Q. You do not call the reconcilement book one of those, you mean the regular books of account? A. Reconcilement book is simply proof of the account between the two banks.

Q. You gave us approximate estimates of the overdrafts—

Mr. Hinds: Uncharged overdrafts.

Q. Uncharged overdrafts of certain customers, only one, who was that? A. I think I stated two or three, Armstrong, I think I said Armstrong's was about thirty thousand.

Q. Did you give any amounts in connection with the others? A. I think I said I imagined the Miele & Bruno was over ten thousand dollars.

Q. What is your estimate based on? A. Knowledge.

Q. Knowledge acquired how? A. That is my memory as to what was in there at certain times.

Q. Knowledge acquired when? A. At the time I was there, items I was holding in the cash.

Q. Now you spoke at one time there of certain writing, it was called writing over, that is to say, there appear to be entries on a certain book which are not written in upon a line but are written in between two lines, although there was writing on those two lines; do you know to what I refer? A. No, I don't think I gave any such testimony.

Q. Why I think on December 14, 1912, or a page dated on that date was shown you, and on that page were erasures; have you that book here? A. It is the paying teller's proof book.

Q. Now is there any writing in there which was inserted after you had made up your proof? A. There has been some changes made here since the proof was made up.

Q. Do you recall referring to one of the books in which you made entries, in which you made the statement that there had been writing inserted or writing over after you made up your proof; do you remember making such a statement on your direct-examination? A. I don't remember

making that statement, I may have said that something was altered, I think that is what I did say; there has been an alteration made here in two or three different columns, and also been an erasure made.

Q. When you said writing over then you meant an alteration? A. Evidently referred to that, yes.

Q. Well, I got a wrong impression. Your impression is that this was done after you had made up the proof, is that it? A. That is my impression from what I see here, yes, sir; this is nothing more or less than that this amount was brought down here, an error, it should have appeared up above.

Q. Are the footings as they appear on that page now correct?

The Court: On page 634.

Q. On page 634 of this paying teller's proof book? A. Yes.

Q. They are correct? A. Yes, sir, that is, the general proof here is correct; I haven't been over these subsidiary footings.

Q. Can you tell what figures were on the page where the erasure appears, where the surface of the page is rubbed? A. It looks to me as though they are the same figures as appear up above; in other words, the cash books of that day, December 14th.

Q. And having been placed at a part of the page other than where they should appear you simply have erased them and put them where they belong in your opinion? A. It looks to me so now, yes.

Q. You didn't think those erasures involved

any impropriety, it was simply a question of convenience and honest bookkeeping that was involved, is that it? A. Simply a question of putting the figures in the wrong place and discovered afterwards and put where they belong.

Q. If they had been permitted to remain where they were would it have misled anybody? A. I can't say that it would.

Q. On Saturdays didn't it frequently happen that in place of entering the items the sum total was entered? A. A machine list made up, yes, of the total of the checks.

Q. And simply the total entered? A. The total entered in the paying teller's proof book.

Q. Do you know what part Mr. Mindnich took in making up entries in Smith's general ledger? A. No, sir, I do not.

Q. You know nothing about that? A. No, sir.

Q. Did you assist in the work of the Department Examiners after the bank was closed? A. No, sir.

Q. That check 7445 which you were shown, a check for $4225, am I correct? A. Yes.

Q. That check was made out to a Mr. Pierson, was it? A. E. C. Pierson I think was the name.

Q. Who is that Mr. Pierson? A. I don't know him.

Q. What did that check involve, do you know? A. No, sir.

Q. You made it out, didn't you? A. I don't think I did.

Q. There was one check there that you did? A. I might have made it out, I don't recollect.

Q. Wasn't there one check there that you signed, a check your attention was called to? A. Yes, there were several that I made out.

Q. Now this bank over in New York, this Sea-Board National Bank, that was your first place of employment or the last? A. Oh, no, that was the last place before I came to the Roseville Trust Company.

Q. How long had you been there, did you say? A. I can't state exactly, I think I was only there about a year or a little over.

Q. Do you know whether the directors of the Roseville Trust Company knew of your prior employment? A. No, sir, I do not.

Q. You don't know. How did you come to seek your position with them? A. Through Mr. Smith.

Q. Through Mr. Smith? A. Yes.

Q. That is your only knowledge of it? A. Yes, sir.

Q. You had recommendations from your former employers? A. Yes, sir.

Q. How old a man are you? A. Thirty-eight.

CROSS-EXAMINATION by Mr. Whiting:

Q. I understand that you falsified the books, am I right? A. I said that I made false entries, yes, sir.

Q. That is what you understand me by falsifying the books, is it not? A. Well, I contend that I made false entries.

The Court: Well, do not quarrel about the terms.

Q. You made false entries? A. Yes, sir.

Q. Of course you understood when you were making those false entries that that was an unlawful thing to do? A. Yes.

The Court: That does not make any difference; you need not answer that question.

Q. In making those false entries did you have in mind that they might be discovered?

The Court: That does not make any difference.

Q. Did you endeavor in making these false entries to do so so that they would not be discovered? A. No, sir.

Q. Why did you make them? A. Direction of Mr. Smith.

Q. Were all the false entries which you made specifically instructed by Mr. Smith? A. I think so, yes.

Q. And except for that instruction you had no motive and knew nothing about why they were falsely made? A. No.

Q. How did you know they were false? A. Well, I know when I certify a check and there is no money in the bank it is a false entry.

Q. Were there any other falsifications except with respect to certified checks? A. Yes, sir, entries in pass books for other amounts than were deposited.

Q. And were there any other entries in any other books than the ones you have now referred to? A. Not that I can recall, no.

By the Court: Q. That I do not quite understand. The pass books are in the hands of the customers, are they not? A. Yes, sir.

By the Court: Q. A customer would come to you and say that he wanted to deposit $100, he would produce the $100, now do you mean to say that after he had handed you $100 that you made an entry of $50? A. Yes, sir.

By the Court: Q. How was it possible to do that without escaping immediate detection? A. That wouldn't be an entry in the pass book, it

would be an entry on the deposit ticket that was credited to his account; the entry in the pass book would be correct.

By the Court: Q. Well, that is what I said. A. Well, I correct myself on that, it wasn't in the pass book, it was on the deposit ticket that went through.

By the Court: Q. Well, that I understand, but I did not understand the other. A. Well, that is how it was.

Q. Did you make any entries in any other books than the pass books, which were false? A. Not that I recall.

The Court: He says that he did not make false entries in the pass book.

CROSS-EXAMINATION by Mr. Cornish:

Q. Mr. Jennings, these overdrafts involved in the case of Armstrong, Intercity and Bruno accounts were made by the paying teller I suppose? A. The overdrafts?

Q. The checks were presented at the window? A. No.

Q. And the money paid out? A. No, sir.

Q. How did it happen? A. The bigger portion of them came through the receiving teller; in other words, they came up in the exchanges and passed through the receiving teller's department and were turned over to the paying teller.

Q. That is, they were checks of those individuals, drawn on the Roseville Trust Company and presented to other banks or deposited in other banks and coming around through the exchanges and paid? A. Yes.

Q. And first appeared in the Roseville Trust

Company in the receiving teller's account? A. Yes.

Q. From him they were transferred to the pay-

Q. Where they remained for a longer or shorter period, and then they disappeared from that account? A. Yes.

Q. After they disappeared from the paying teller's account what do you know about them. A. I don't know anything about them.

Q. So far as you know they might have been taken up by note or cash or in some other way?

Mr. Clark: I object to the question, he has answered he doesn't know anything about them.

Mr. Cornish: Well, let it go at that.

The Court: I think that is a fair question.

CROSS-EXAMINATION by Mr. Fairlie:

Q. Mr. Jennings, you were at the Roseville Trust Company at the time the State Examiners made their respective examinations? A. At what time?

Q. At the time the State Department made its various examinations? A. I was there during some of the examinations.

Q. Did you have personal knowledge at the time those examinations were made that there were then false entries in the book? A. Personal knowledge?

Mr. Clark: I object to the question upon the same ground, that this line of questioning was ruled out by your Honor this morning on the ground that it is not proper cross-examination. At the time defend-

ants put in their own case it is then their privilege to call any witness they please, and the question of the pertinency of that testimony will then be fully discussed before your Honor.

The Court: I see no objection to this question.

Q. (Question read) A. No, sir.

Q. Prior to the time the bank closed did you have personal knowledge of the totals in any of the books being changed from time to time? A. The totals in any of the books?

Q. The totals of columns? A. In what books?

Q. Any of the books? A. Yes, I know there has been changes made in the paying teller's proof book that I kept.

Q. Do you know of any other books in which the totals were changed from time to time? A. Not of personal knowledge, no.

Q. How do you know that Mr. Sexton telephoned to Mr. Smith concerning examinations? A. I think I already stated that Mr. Smith told me.

Q. That is the only knowledge you have? A. Yes, absolutely.

Q. Can you tell what examination it was concerning which Mr. Smith told you that Mr. Sexton had 'phoned him? A. No, sir, I cannot.

CROSS-EXAMINATION by Mr. Munroe:

Q. You have spoken of a check for $2,000 which you drew against your own account; do you remember how that was entered on the books? A. It wasn't entered at all.

Q. It was simply carried as a cash item? A. Yes.

Q. Paid out of the cash; what eventually became of the check? A. No, it wasn't made out to cash, it was made out to Mr. Meyers.

Q. When it came through it was paid out of the cash; what eventually became of the check? A. The check was held in the paying teller's cash.

Q. And then? A. It was taken out.

Q. And put where? A. I don't know exactly where it was put or where it is at the present time.

Q. And was it charged against anything, as far as you know? A. No, sir.

Q. Do you remember on the occasion of the Bierman matter of which you spoke, in which you testified you spoke to Mr. Smith on his return, do you remember what Mr. Smith said on that occasion, or what was done about that? A. No, I do not.

Q. Don't you remember anything further than you have testified? A. I do not.

CROSS-EXAMINATION by Mr. German:

Q. Now this two thousand dollar check you have mentioned as being yours, then there was no entry on the book of any kind?

The Court: Well, he said that.

Q. So that no one could tell, except they knew that the check was drawn, that it had been drawn?

The Court: The check was drawn in favor of Mr. Meyers and Mr. Meyers got it and no doubt deposited it, and it came back to the bank and it was then carried as cash. That is the explanation that this witness gives.

A. That is it.

Mr. Clark: It was paid?

A. Yes.

By Mr. Hinds: Q. You have said that that two thousand dollar check did not appear on the individual ledger showing your deposit account; did it appear on any of the other books of the bank? A. Not that I know of, no.

By Mr. Stiefel: Q. By whom was it paid? A. Roseville Trust Company through the receiving teller.

By Mr. Stiefel: Q. Who was the receiving teller? A. Mr. Thompson.

By Mr. Stiefel: Q. Mr. Thompson? A. Yes.

By Mr. Stiefel: Q. Did Mr. Thompson speak to you about it at the time? A. No, sir.

By Mr. Stiefel: Q. He said paid it without saying a word to you? A. As far as I know, yes.

The Court: It came through the receiving teller and then it went into the box of the paying teller.

Mr. Stiefel: I want to know how it was paid.

A. It was paid through the exchanges.

By Mr. Hinds: Q. You have said on cross-examination that in the other banks where you were employed the directors did not go into the cage and count your cash; was your cash counted by anyone other than yourself in these other banks oftener than twice a year, as in the Roseville Trust Company? A. I couldn't say how often it was counted.

Mr. Fairlie: I object to the twice a year in the Roseville Trust Company.

The Court: Well, unfortunately you have made that evidence competent; one of the counsel here asked him the question; now they have a right to examine on that.

Mr. Fairlie: The question presupposes that it is proved that the cash was counted only twice a year; that is not the proof.

The Court: That evidence has been made competent by a question put on cross-examination and I cannot exclude it. I should have probably excluded it if it had been asked on the direct-examination, but now that it was brought out on cross-examination why I do not see how I can exclude it.

RE-DIRECT-EXAMINATION by Mr. Hinds:

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

Q. How often? A. I should say about four times a year.

Q. Now in the other banks where you were employed was it the practice to allow cash items to accumulate in the paying teller's cash? A. I wasn't in the paying teller's department.

Q. Was it a fact that the uncharged checks comprised the greater part of the cash items which accumulated in your cash in the Roseville Trust Company? A. Yes, sir.

Q. You have spoken about past due paper which Mr. Smith went out to collect; while you were in the bank did you know of any substantial sum of this past due paper? A. I couldn't give you the amount, I know there were numerous ones past due.

Q. You knew it at the time? A. Yes.

Q. How early did you know of this past due paper? A. From the start.

Q. How long did that continue? A. Until I left the bank.

Q. Now you have spoken of reconciliations of

depository bank accounts which you made which showed omitted entries, which gave indication that entries had not been properly made on the books of the bank; that was prior to the time when Mr. Smith started to make the reconciliation, was it not? A. Prior to that time, yes.

Q. Now, you have referred to the paying teller's proof book as of December 14th, 1912, and said on cross-examination that the footing of the general cash there was correct; I ask you whether the footing would have been correct had the figure eleven thousand odd not been changed? A. No, sir, it would not.

Q. You have spoken of totals having been changed by you in your paying teller's proof book; was that done at the time of the making up of the proof or subsequent? A. Either at that time or some subsequent time.

Q. I show you Exhibit C-6 and ask you if you know what that book it? A. General ledger of the Roseville Trust Company.

Q. Whose hand writing is that? A. The biggest part of it is in Mr. Smith's.

Q. Is that a book in regular use in the Trust Company? A. Yes, sir.

Q. What book did you keep in connection with bills purchased? A. Bills purchased book.

Q. Now I show you a book which is marked C-54 for identification, and ask you if that is the bills purchased book kept by you? A. Yes, sir.

Q. That was the book in regular use in the Roseville Trust Company? A. Yes, sir.

Mr. Hinds: I offer that in evidence.

Marked Exhibit C-54.

Also identification C--44, being teller's

proof book, December 5, 1908, to November 27, 1909.

Marked Exhibit C-44.

Paying teller's proof book from November 29, 1909, to December 3, 1910.

November 29, 1909, to December 3, 1910.

Marked Exhibit C-45.

Paying teller's proof book from December 6, 1910, to November 16, 1911.

Marked Exhibit C-43.

By Mr. Stiefel: Q. You said part of that general ledger was in Mr. Smith's handwriting; in whose handwriting is the other part? A. A Mr. Feick kept the ledger for a certain time.

By Mr. Stiefel: Q. Who is he? A. Young man connected with the Home Ice & Products Company, or its successor, I don't remember just which concern he was with.

By Mr. Stiefel: Q. How old a man was he? A. I couldn't tell you.

By Mr. Stiefel: Q. How long was he in the employ of the bank? A. I don't know that he was ever in the employ of the bank, he was simply brought in there by Mr. Smith to help out.

By Mr. Stiefel: Q. Over what period of time did he make these entries? A. I think he was there some month or two, possibly a little longer.

By Mr. Stiefel: When, what year? A. I think it was in 1913.

By Mr. Stiefel: Q. In 1913, what part of the year, have you any idea? A. I don't know.

Mr. Hinds: Look at the book and you can tell.

By Mr. Stiefel: Q. Anybody else make any entries in that book? A. Not that I know of.

G. ROWLAND MUNROE, re-called:

Direct-examination by Mr. Hinds:

Q. While you were a director did you have any knowledge of business dealings between Mr. Scarlett and Mr. Smith? A. I do not recall any.

Q. Did you draw a deed of trust in which Mr. Scarlett was the grantor and Mr. Smith the grantee? A. I don't have any recollection of it.

Q. Did you draw any papers in which Mr. Smith was the grantee or assignee in connection with the McDevitt matter? A. I do not recall it.

Q. Do you recall having drawn any papers in the McDevitt matter at all? A. What is the McDevitt matter?

Q. If you do not recall it I won't press the matter? A. I do not recall it; I draw a good many papers in my office.

Q. If you recall drawing any papers where Mr. Smith was the nominal party benefited as grantee or assignee, and where the consideration was paid by the Trust Company, or the Trust Company was the real party in interest? A. I do not recall any such instance, no, sir.

Q. Did you communicate to the board of directors all that Mr. Appleton had told you about the Nones matter? A. I think I did, everything I recall, it was a matter of general discussion in the board.

Q. And did you communicate to the directors all that Mr. Appleton told you about Mr. Smith generally, about his previous reputation and so on? A. As far as I recall.

Q. Do you recall having communicated to them any statements by Appleton to the effect that he

had been rumored to be unsatisfactory elsewhere, in other institutions? A. I do not remember that Mr. Appleton made any such statement.

Q. Do you recall having reported any such rumor to the directors? A. No, I do not.

Q. To your knowledge was such rumor, unfavorable rumor repecting Mr. Smith's banking career prior to going into the Roseville Trust Company, ever discussed at any meeting of the directors? A. I do not recall there was any such rumor until after the bank closed.

CROSS-EXAMINATION by Mr. Cornish:

Q. Mr. Munroe, were you on the organization committee of the bank? A. I was.

Q. And did the organization committee select Mr. Smith? A. It did, yes, sir.

Q. Did they make any investigation into his history and his banking experience and his habits? A. Yes; I was appointed a committee by the organization committee to inquire concerning Mr. Smith; Mr. Smith was first brought to our attention by the National Bank Examiner, Mr. Bryan, who previously had been the cashier of the East Orange National Bank, which is now the Essex County Trust Company; it had been suggested to us that Mr. Bryan might be willing himself to accept the position of secretary and treasurer, and I consulted him about that at the instruction of the committee; he took the matter under advisement but finally decided that he would not at that time give up his work as National Bank Examiner. I then asked him whether from his experience in examining banks there occurred to him anybody who would be the right

man for our institution, he understood our field and what we proposed to do, and he said he would think about it and make any suggestion that occurred to him; two or three days later, as I remember, he called me on the 'phone and suggested that he thought Mr. Raymond E. Smith, the assistant cashier of the Second National Bank, would be just the right man for us; he said that he had had a long experience in banking, that his father and his uncle were both officers or had been officers or had been in Orange banks, and that he had had a very thorough training as a banking man and had a very nice personality and everybody regarded him highly, and as he thought of it it seemed to him that he would be a great acquisition if we could get him as secretary and treasurer for our new enterprise, but he said "Don't take my word for it, I have known him, as I was cashier of a neighboring bank, and I think very highly of him, but I think you better look him up yourself." So I went up to Orange, and I think first I spoke with Mr. Calhoun, whom I knew was in many instances at least acting as attorney for the Second National Bank; I told him as a friend that we had worked hard to get the right crowd of men together to start this institution, and that we found a good many who were thinking of taking capital, buying shares, and wanted to know who the active man would be, the man in actual charge, the executive officer, and I told him if we could get the right man I thought it would be a great help to us to know in advance who he might be, and I said that Mr. Smith had been suggested; well, he said he had known Mr. Smith for many years, that he had sat with him

on the Common Council of Orange, that as attorney for the Second National Bank and as one doing business there he had quite a little experience with him, and he thought all that Mr. Bryan said was perfectly true of him, that he would be a very desirable man and in every way qualified. A office Mr. Calhoun was there, he came to me and he said "Have you come to any decision about your secretary and treasurer for your new institution at Roseville? I said "No." "Well," he said, "the more I think of it the more I think if I was in your place and I could get Ray. Smith I wouldn't look any further, I don't think you could do better possibly." After talking with Mr. tional Bank, and he spoke in the very highest Howe & Davis, and he said that he knew Mr. Smith very well and had known him for years, and that he thought we couldn't find a man that would be better qualified in every way than Mr. Smith; he was a man that naturally made friends, and everybody held him in the highest esteem, and he was certainly most thoroughly experienced as a banking man. Then I went to see Judge Storhs of Orange. Judge Storhs, as I remember, was one of the directors of that Second National Bank, and he spoke in very highest terms of Mr. Smith. He was the only one that made any qualification; his qualification was that he didn't know how good an executive Mr. Smith might be if he was in entire charge of an institution, he didn't know how well he would make others work, he said he knew he was a good worker himself but he wasn't quite sure how strong he was as an executive; but aside from that he spoke in the very highest terms of Mr. Smith in

every way. I then went to see Mr. Roth, of the firm of Roth & Company, the butchers who owned the building in which the Second National Bank had its quarters, and Mr. Roth was very much pleased at the suggestion that Mr. Smith might have this opening, he said that he had been assistant cashier there a good while, and the cashier was an old man and Smith had really been doing the work, he said, but he didn't get the credit for it, or he didn't get the salary, but he thought he ought to have advancement or ought to have a place where he could show what he could do for himself, and I remember he said "If you got Ray Smith as your secretary and treasurer," he said, "I would like to have some stock in the institution;" he said, "I know some other men up here that I am sure would feel the same way about it." I think it was Mr. Bryan who said that Mr. Smith while he was assistant cashier was really the acting cashier, and that during the president's enforced absence in 1907, I think it was, when there was a very tight money market that Mr.—I forget the president's name this moment—was obliged to go south to Florida for his health, and that during his absence for several months Mr. Smith had virtually run the bank, with no cooperation except from the directors and the committee.

WILLIAM J. THOMPSON, re-called:

Direct-examination by Mr. Hinds:

Q. I direct your attention to a number of number of books entitled on the back individual deposits and individual credits, general cash, and ask you to look at each and every one of those, and if you find it to be a book which you recognize as one which was regularly in use in the Roseville Trust Company to state what the book is so that it may be marked in evidence? A. This is the M to Z debit book, covering period from April 24, 1913, to August 13, 1913.

Offered in evidence and marked Exhibit C-20.

A. M to Z debit book from November, 1912, to April 23, 1913.

Offered in evidence and marked Exhibit C-21.

A. M to Z debit book, May 8 to November 11, 1912.

Offered in evidence and marked Exhibit C-22.

A. M to Z debit book from October 9, 1911, to May 7, 1912.

Offered in evidence and marked Exhibit C-23.

A. M to Z debit book, January 20 to October 7, 1911.

Offered in evidence and marked Exhibit C-24.

A. M to Z debit book from April 29, 1910, to January 19.

Offered in evidence and marked Exhibit C-25.

Exhibits offered in evidence

A. Debit book from December 1, 1908, to October 27, 1909.

Offered in evidence and marked Exhibit C-27.

A. M to Z credit book from July 22, 1912, to August 13, 1913.

Offered in evidence and marked Exhibit C-28.

A. M to Z credit book, November 5, 1910, to July 20, 1912.

Offered in evidence and marked Exhibit C-29.

A. M to Z credit book from December 1, 1908, to November 4, 1910.

Offered in evidence and marked Exhibit C-30.

A. A to L debits, April 23, 1913, to August 13, 1913.

Offered in evidence and marked Exhibit C-31.

April 22, 1913.

Offered in evidence and marked Exhibit C-32.

A. A to L debits from May 13, 1912, to November 19, 1912.

Offered in evidence and marked Exhibit C-33.

A. A to L debits from October 30, 1911, to May 17, 1912.

Offered in evidence and marked Exhibit C-34.

A. A to L debits, March 6, 1911, to October 10, 1911.

Offered in evidence and marked Exhibit C-35.

A. A to L debits from May 25, 1910, to March 3, 1911.

Offered in evidence and marked Exhibit C-36.

A. M to Z debits from October 28, 1909, to April 28, 1910.

Offered in evidence and marked Exhibit C-26.

A. A to L credits, April 9, 1912, to August 13, 1913.

Offered in evidence and marked Exhibit C-37.

A. A to L credits, from March 25, 1910, to April 8, 1912.

Offered in evidence and marked C-38.

Q. Now, Mr. Thompson, as to the foregoing, did you make all the entries in those books? A. Some of them.

Q. Do you recognize each one of them from its handwriting as having been a book of the Roseville Trust Company? A. Yes.

Q. As stated? A. Yes.

Q. Now I show you certain cash books and ask you whether each one of those you recognize as a book which was in use in the Roseville Trust Company while you were there? A. Yes.

Q. And to give us the names so that they may be marked in evidence. A. General cash books, December 1, 1908, to March 22, 1909.

Offered in evidence and marked Exhibit C-42.

A. March 23, 1910, to May 23, 1911.

Offered in evidence and marked Exhibit C-41.

A. May 24, 1911, to May 9, 1912.

Offered in evidence and marked Exhibit C-40.

Q. Those are all general cash books? A. Yes. May 10, 1912, to April 29, 1913, which is marked Exhibit C-39. April 30, 1913, to August 13, 1913, which is marked Exhibit C-7.

Q. Have you had each of those books in your hand and examined them? A. Yes.

Q. And each one you find to have been a book which you recognize as having been in regular use in the Roseville Trust Company? A. Yes.

Q. I show you a bundle of small books, purporting to be cash item books of the Roseville Trust Company, and ask you to take each one of them and examine it and look at the handwriting in each and tell me whether or not you recognize each of them to be a book which was regularly in use in the Roseville Trust Company while you were employed there? A. Yes, these are all return item books regularly in use in the bank.

Q. What do you mean by return item book? A. A book in which all items not charged directly to the ledger are entered, and the reason for their being held out is usually marked opposite the name of the drawer of the check and the amount.

Q. And by what employe were these kept? A. Receiving teller.

Q. Do you find that those were kept by yourself during the period in which you were receiving teller? A. I do, yes.

Mr. Hinds: I offer these all in evidence, there being thirty-six of them.

Marked Exhibits C-112, C-113, C-114, C-115, C-116, C-117, C-118, C-119, C-120, C-121, C-122, C-123, C-124, C-125, C-126, C-127, C-128, C-129, C-130, C-131, C-132, C-133, C-134, C-135, C-136, C-137, C-138, C-139, C-140, C-141, C-142, C-143, C-144, C-145, C-146, C-147, C-148, C-149, C-150.

Q. Now, I show you six books described on the outside as Investment Department Debits or Credits, as the case may be, and I ask you to look at each of those and state whether those were books which were regularly in use by the Roseville Trust Company while you were employed there? A. They are.

Q. Do you find handwriting there which you recognize? A. Yes.

Q. Now what was the purpose of each of those books in the course of business of the Trust Company? A. All of the investment department debits are entered in the debit book.

Q. And by debits do you mean withdrawals? A. Withdrawals under the date on which the withdrawal was made, and the credits are likewise so entered in the credit book under the date on which the deposit was made.

Q. And deposits is another name for credits? A. Credits, yes.

Q. What employe had charge of these books? A. Assistant bookkeeper usually.

Mr. Hinds: Then I offer these in evidence. Investment Department Credits No. 1, already marked for identification.

Marked Exhibit C-57.

Investment Department Credits No. 2.

Marked Exhibit C-55.

Investment Department Credits No. 8, apparently intended for credits No. 3.

A. Yes, the debits and the credits are both in the same book.

Marked Exhibit C-58.

Investment Department Debits No. 1.

Marked Exhibit C-60.

Q. Do you find that in some of these books there are both debits and credits? A. I do, yes.

Q. And so indicated? A. Yes.

Investment Department Debits No. 2. Marked Exhibit C-56.

Investment Department Debits No. 3. Marked Exhibit C-59.

April 18, 1917.

CHARLES M. MINDNICH, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. I am a general bookkeeper in the Savings Investment & Trust Company, East Orange.

Q. You were employed in the Roseville Trust Company? A. Yes, sir.

Q. During what period? A. From April, 1910, until the close, August 13, 1913.

Q. And in what capacity were you employed when you first went there? A. As clerk.

Q. How long did you act as clerk? A. Until April, 1911.

Q. And then what did you become? A. I became bookkeeper.

Q. And how long did you remain bookkeeper? A. I remained bookkeeper until some time in July, 1913.

Q. And after that? A. Note teller.

Q. That was to the close of the institution, August, 1913? A. Yes.

Q. Now I show you the transfer binder ledger

which has been marked in evidence Exhibit C-108, and turn to the account of Claflin; this is the account concerning which Mr. Thompson testified yesterday, so far as he went, I want to bring it on down from that point; now start at the point where you find your handwriting begins in the account? A. My handwriting is not on any page here, my handwriting does not appear here.

Q. That is all in Mr. Thompson's handwriting? A. Yes.

Q. Do you recognize the handwriting? A. Yes, sir, I do.

Q. Will you tell me whether after October 13, 1911, when the balance was $164,000 and dropped to $21,000 you find that the balance again reached over $100,000 or averaged over $30,000 or $40,000 during the period covered by this transfer ledger down to December 12, 1911? A. No, sir, it never reached $100,000.

Q. And was there ever after that, during this period, any decided drop in the average balance? A. Yes, at various times.

Q. Well, I think the ledger speaks for itself.

The Court: What was the average balance, glance over it, and speaking roughly? A. I should say about twenty thousand dollars.

Q. Now will you turn to the ledger itself, Claflin account, whose handwriting is it at the start there, December 12, 1911? A. Mr. Thompson's handwriting.

Q. Where does your handwriting begin? A. Mine appears here I believe every Saturday up to June 15th; from that date on my handwriting appears here every day.

Q. What year? A. 1912 up to July 15th; then Mr. Thompson it seems kept the ledger for a month or so.

Q. You recognize his handwriting? A. Yes, sir, I do.

Q. Now, will you tell me whether at any time after the ledger itself begins here in December 12, 1911, there was any marked change in the average balance or any substantial drop, as testified to here in 1913, from over two hundred thousand dollars down?

Q. What do you find, Mr. Mindnich? A. Well, I find an average balance here of between twenty-five and thirty thousand dollars, and at times it drops down as low as five thousand; in one case here on October 11, 1912, there is only $800 balance here on that date, and on November 12th there is a balance here of $241.

By Mr. Cornish: Q. Is that 1912? A. 1912, yes, sir.

By Mr. Cornish: Q. November, 1912? A. November, 1912.

Q. Turn along into 1913 and tell us what you find? A. Well, during 1913 it appears they maintained an average balance of about $40,000 right up to the close on August 13th.

Q. And during the entire year 1913 you find that the balance reached the figure $100,000? A. Why, yes, in one instance here.

Q. When was that? A. June 14, 1913, it was up to $102,000.

Q. And following that was the deduction down to what you said the average was sudden or gradual?

Mr. Stiefel: I object to that.

Q. Well, I think the book speaks for itself on that. Do you recognize this as a book which was in use in the Roseville Trust Company? A. Yes, this is the individual demand ledger of the Roseville Trust Company going from A to, I think it goes to H, I am not sure, from A to the end of the F's, from A to G.

Mr. Hinds: I think this has not been marked in evidence, so I offer the book in evidence.

Marked Exhibit C-151.

By Mr. German: Is it a loose leaf ledger? A. Yes, sir.

Q. Do you recall seeing the examining committee of the directors at work in the institution? A. Yes, sir.

Q. Have you any recollection of their last visit there in May, 1913? A. I believe I have, yes, sir.

Q. Tell us who you remember having seen? A. Mr. Sexton I think was the chairman of the examining committee at that time, and he had his co-workers, Mr. Benjamin, and Mr. Dunn—I am not sure whether he was there or not.

Judge Collins: He was not a member of the committee.

Mr. Stiefel: Well, this gentleman is testifying to his recollection.

Q. Have you finished your answer? A. Yes.

Q. To refresh your recollection I will read—

Mr. Stiefel: I object.

The Court: Why do you want to go over this again and again; the minutes show who were there; it was testified to by the gentlemen themselves and their testimony is backed by the minutes, and you do not want anything more than that.

Q. It was not to bring out who was there but to refresh the witness's recollection as to what each did, which I was about to ask him next. Now Mr. Mindnich, to refresh your recollection as to who was there, in addition to the ones you have said—

Mr. Stiefel: I object. This witness is testifying to his recollection. If his recollection is so weak that he cannot remember who was there on that last occasion how can he testify what the person whom he cannot remember was there did on that occasion, when he cannot remember who was there. I do not say if he could step aside and think it over that it would not come to him, but to refresh his recollection * * * here is a printed book, now go ahead and testify what these men did.

The Court: The witness has been asked the question who was there, or who were there; now he has stated, he has given names? Do you recall any other names?

A. Yes, I believe Mr. Banister was there also, Mr. Banister, Mr. Benjamin and Sexton, and I cannot remember any more names now.

Q. What did Mr. Banister do, if you can recall? A. I don't remember that.

Q. Do you remember what Mr. Sexton did? A. Well, Mr. Sexton was the chairman of the Examining Committee, he had practically charge of everything.

Q. Do you remember what particular part he took, aside from being chairman? No, I do not.

Q. Do you remember about Mr. Benjamin? A. If I am not mistaken Mr. Benjamin counted the cash the last time.

Q. Now did you see them at work on the deposit ledgers? A. Yes, sir, I did.

Q. Tell us what you saw in May, 1913? A. I was requested to make a list of all the accounts on the individual demand ledgers, and I did so and turned them over to one of the members of the examining committee to check them up, I don't remember just who that was.

Q. Did you see any member of the examining committee at work upon the general ledger or looking into the general ledger? A. Yes, I believe I saw Mr. Sexton consult the general ledger several times.

Q. When? A. During the period of the examination.

Q. Now when these gentlemen came to the bank that afternoon do you remember about what time it was? A. I should think it was around three or quarter after three o'clock.

Q. What were you working on at that time? A. I was the bookkeeper.

Q. On the general ledger? A. No, on the individual demand ledgers.

Q. What was Mr. Smith doing? A. Mr. Smith was secretary and treasurer.

Q. Was he working on any book at or after the time of the examining committee's arrival? A. Well, not to my knowledge.

Q. Now, according to the practice in the Roseville Trust Company when were the entries made in the general ledger for the work of a given date? A. In our place the work was generally posted some times the same day and some times the next morning, the majority of cases the next morning.

Q. When it was posted the same day about what time would the work be completed? A. Whenever we were through with our regular day's business which would be around 4 or half past 4 o'clock.

By the Court: Q. Did you have any particular hours? A. Well, the bank closed at 3 o'clock.

By the Court: Q. Yes, but after that the officers were still working? A. Yes, sir.

By the Court: Q. Did they stop at any designated time? A. No, no stated time, no, sir.

Q. In May, 1913, when the examining committee arrived did they at once start upon their work, or did they wait until all of the work had been completed on the books by everyone in the Trust Company? A. Well, in that case, the ledger in that case had to be posted before they could do anything, in order to get their figures.

Q. Did they start on any other matters or did they hold up all the examination while waiting for the ledger to be written up? A. Well, I think there were other things that they could prove, because there were a good many items on the general ledger that didn't move, that had no action on them from day to day.

Q. Such as what? A. Well, take for instance the stocks and bonds or various kinds of loans.

Q. Did that include collateral loans? A. Well, maybe at that time it did, because they may not have moved at that time.

Q. Well, now, in December, 1912, have you any recollection of the examination in that year? A. Yes, I have.

Q. Who was on the committee then? A. I believe the same gentlemen were on the committee.

Q. Does what you have testified to as to the time of their arrival and the work that was done on the books apply to December, 1912? A. Yes, sir, it does.

Q. Did you take part in the individual deposit ledger work at that time? A. I believe I did, yes.

Q. What did you do or what did they do? A. I made a list of all the accounts on the individual demand ledgers, there were two of them at that time, and turned them over to the gentleman who had charge of checking back the accounts at that time.

Q. Do you know whether or not they checked up the footing of those ledgers? A. The individual demand ledgers?

Q. Yes? A. They compared the total of my list with the total on the general ledger.

Q. Did they check up the correctness of the total of your list? A. I believe they did, yes, sir.

By the Court: Q. Was not that done by a machine? A. Well, they were listed on a machine, but in listing accounts like that there is very great chances for an error press a wrong key and get the wrong amount in the list and that would throw the footing on the end out.

By the Court: Who does the addition? A. I I made the list.

By the Court: Q. Who does the addition? A. Yes, sir.

Q. What do you mean by checking up the list? A. I mean that someone called back, or one man maybe did, check back the amounts on the individual demand ledgers to the list, to the runner of the accounts.

Q. From the accounts themselves? A. From the accounts themselves.

By the Court: Q. That is to say, one man took the individual ledger and called off the amount, and another man took the list and saw that the amount as called off corresponded with the amount on the list; is that what you mean? A. Yes, that is correct; the one man could have done both things.

By the Court: Q. Yes, one man could have, but the question is whether one man did it or two? A. I do not remember whether two did it at that time or whether only one man checked it back.

Q. Was one of the men who performed that operation a member of the examining committee in May, 1913? A. Yes.

Q. How was it in December, 1912? A. The same.

Q. Do you know whether the examining committee made a footing of the general ledger? A. No, sir, I do not.

Q. You said that they did make a footing of the list? A. Yes, sir.

Q. You saw them do it? A. Which list do you mean?

Q. The long machine list of the individual deposit ledgers? A. They wouldn't make a footing of it, they would take my word for it that things had been run up right.

Q. Were they present when the run off was made on the machine list by you? A. They were in the bank, but they didn't watch me operating the machine.

Q. Did you observe what they did when they counted the cash? A. No, sir, I had nothing to

do with that, I was a bookkeeper and had no charge of the cash.

Q. Do you recall the examination in April, 1912? A. April, 1912? Well, not very distinctly, no, sir.

Q. Do you recall Mr. Dunn having made any examination as a member of the committee? A. I remember Mr. Dunn was on one of the committees, in what year it was I do not remember.

Q. What did he do on that occasion? A. What particular line you mean?

Q. Yes? A. I do not remember.

Q. Did you have a part in the run up of the individual ledgers in April, 1912? A. Yes, sir.

Q. And does what you have said as to who made the machine list and who checked it up apply to 1912, April? A. Yes, sir.

Q. In that month did any member of the examining committee check up your footing of the list? A. Yes, sir.

Q. Now understand that I mean adding up the separate figures on the machine list to see that the total was correct? A. Yes, sir.

Q. Who did that? A. You mean which particular member of the examining committee?

Q. Yes. A. I don't know who did it, but it would have to be turned over to Mr. Sexton, who was chairman, he would have to mark it.

Q. You said that was not done in either December, 1912, or May, 1913? A. I believe I said it was done.

The Court: Counsel is now talking about adding up the entire column as it had been put upon the list by the machine. I understood you to say that you did all the adding and the committee did

not. Now counsel is asking you who did the adding in April, 1912? A. I did.

Q. Did they check up your adding?

The Court: Do not call it checking up, you mislead the witness.

Q. Did they perform the addition themselves after you had done it? A. No, sir.

The Court: I take it that the word checking up has quite a different significance from adding.

Q. While you were in the Trust Company did you know of any instances where checks were paid but not charged to any account? A. Not to my knowledge, no, sir.

Q. Did you know of any instances where notes were discounted or bills purchased but not charged? A. No, sir, not to my knowledge.

Q. During what period did Mr. Smith do the work on the general ledger? A. Well, that I could tell better if I could consult the general ledger because I am very familiar with his handwriting.

The Court: Well, the handwriting is proved, is it not? The witness can only speak from handwriting; it is very easy to prove the handwriting if you have not already proved it.

Q. During the period while Mr. Smith was on the general ledger did any other employe of the Trust Company check up or verify the correctness of his entries? A. No, sir.

By the Court: Q. Did you figure at all in the general ledger? A. I believe I posted it for about two months in some period in 1911, if I am not mistaken.

By the Court: Q. That was your whole connection with it? A. Yes, sir.

Q. On the occasion of any of the committee examinations did you know beforehand that they were coming? A. I believe in one or two instances Mr. Smith told me that he had information that the examining committee was to make an examination, and he told me to run up the ledgers.

Q. And how long before the committee arrived did he tell you that? A. Well, sometimes a half hour.

Q. You say that during the last year or so while you were in the Trust Company, with the exception of the last month, you were at work on the individual ledgers among other things? A. Yes, sir.

Q. Except at examining committee times did any member of the board of directors or any of the officers or members of the executive committee come to your individual ledgers and look them over or investigate them? A. Not to my knowledge, no, sir.

Q. What other books did you work on during that period? A. The savings department ledgers.

Q. Did any of those gentlemen look at or investigate the savings department ledgers? A. Well, this was made in the same manner which was made of the individual demand ledgers, and they were given to the gentlemen to see that the amounts compared with the amounts on the general ledger.

Q. I am not referring to examining times, I am excluding that from the question, I say at any

other times did any of those gentlemen investigate the savings department ledger? A. No, sir.

Mr. Stiefel: You mean during banking hours?

Q. To your knowledge? A. No, sir, not to my knowledge.

Judge Collins: What gentlemen are you speaking of?

Q. The same gentlemen, the executive committee and the directors, as I did in the previous question. Did you have any part in the preparation of the reports to the Banking Department made from time to time? A. No, sir.

Q. Did you ever hear a director, whether member of the executive committee or officer or not, inquire in the Trust Company with respect to verifying the correctness of any such report? A. No, sir.

Q. Did you have anything to do with the preparation of reports as submitted to the executive committee at their meetings, and to the directors at their meetings? A. No, sir.

CROSS-EXAMINATION by Judge Collins:

Q. Mr. Mindnich, it has been proved that Mr. Dunn was only on the examining committee that was appointed in January, 1912, and it has been proved also that he was ill and was not present at the examination in December, 1912, which was the year when he was on the committee. You do not mean to have the Court understand that you have any memory of his being present except on the one occasion when it appears he was there and signed the report, namely, April, 1912, do you? A. I only meant to say I had recollection

that Mr. Dunn was present at one of the examinations, which one it was I do not remember.

Q. Assuming that was April, 1912, which the other proof advanced by the complainant establishes, can you tell what part he took? A. No, I cannot.

Q. You have said that on that occasion you manipulated the adding machine, took off the items of the individual demand ledger and also the saving ledger? A. Yes, sir.

Q. And made the footing? A. Yes, sir.

Q. Now, as I understand it, I am not very expert in adding machines, as I understand it when you take off the figures the adding goes along with it, does it not, so that at the end the footing must be right? A. Yes, sir.

Q. And I understood you to say that whoever it was that had to do with that branch of the examination did actually verify the footing on that occasion? A. Yes, sir.

Q. But not on the other two, the later ones? A. Yes, that is right—that is I operated the machine.

Q. You manipulated the machine and it added itself and it must be right; but on this particular occasion, April, 1912, you recall that somebody verified the footing and saw that it was right? A. Yes.

Q. But the other two occasions that was not done? A. Yes.

By Mr. Stiefel: Q. As far as you know it wasn't done, it could have been done out of your presence? A. Yes.

CROSS-EXAMINATION by Mr. German:

Q. What had been your business previous to being employed by this Trust Company? A. I worked from December, 1909, until April, 1910, in the American National Bank, Newark.

Q. In what capacity? A. Clerk.

Q. And previous to that what had been your business? A. I believe that was the first position I held, Mr. German.

Q. Were you bonded for the performance of your duties? A. Yes, sir.

Q. How much? A. That I don't know, I think it was five thousand, I am not sure.

Q. Was it ever reported to you or did you know in any way that any employe, including Mr. Smith, was negligently or improperly performing his duties in the Trust Company? A. No, sir.

Q. So far as you know were the books regularly kept? A. Yes, sir.

Q. So far as you know were the books kept in a proper manner, that is, with a system that was proper? A. Yes, sir.

Q. Did you ever see Mr. Smith or any other employe try to secret any of the books or any of the securities when the examining committee came? A. No, sir.

Q. Did you notice anything out of the ordinary, so far as the work was concerned on the part of any of the officers or employes of the Trust Company? A. No, sir.

Q. When did it first come to your attention that Mr. Smith had made improper entries in the book? A. The day after the bank closed.

Q. And when did it come to your attention that

Mr. Jennings had made improper entries? A. Oh, about a month or two after the bank closed.

Q. When the examining committee came to the bank of course you did not watch every movement they made? A. No, sir.

Q. And they might have done things and performed duties you did not see? A. Yes, sir.

Q. And when you say that no director looked over the general ledger, you did not see any director look over the general ledger? A. I did see them.

Q. You did see other directors look over that general ledger? A. Yes, on that particular day I say Mr. Sexton had to look at that, he had to compare my totals with the totals on the general ledger.

Q. I mean outside of the examination?

Judge Collins: Other times than the examination.

Q. You knew Mr. Odell? A. Yes.

Q. And he was very frequently at the bank? A. Yes, I believe he stopped there most every morning.

Q. How long would he remain? A. Ten or fifteen minutes, sometimes longer.

Q. What would he do, as you saw? A. He would sit in the front office and have a chat with Mr. Smith.

Q. Would he do anything else? A. Not to my knowledge, no, sir.

Q. You wouldn't say he didn't do other things? A. No, sir, I wouldn't.

Q. And Mr. Fairlie, did he come to the bank often? A. Well, I don't think that Mr. Fairlie came in very often, no, sir.

Q. What do you mean by that, that you don't remember his coming? A. Well, I was in a position where I would see him if he did come in because I worked right next to the front office.

Q. You wouldn't say he did not? A. I would not, no, sir.

Q. How about Mr. Foster? A. I believe for a time after 1912, and some time in 1912 Mr. Foster was at the bank every day for an hour or so.

Q. What was Mr. Foster doing? A. He had charge of the bank while Mr. Smith was outside soliciting business; that is the way I understood it.

Q. Did Mr. Foster frequently look over the books and look after affairs generally? A. Well, not to my knowledge, no, sir.

Q. Well, he was there in the bank looking around? A. Yes.

Q. The books were all open to everybody's inspection? A. Yes.

Q. Including the general ledger? A. Yes.

Q. Did Mr. Munroe come frequently, one of the executive committee? A. Well, I wouldn't say frequently.

Q. Well, you wouldn't say he wasn't there freqeuntly? A. No, sir.

CROSS-EXAMINATION by Mr. Stiefel:

Q. Mr. Munroe's office was right in the bank building? A. Upstairs, right above the bank.

Q. And isn't it a fact that he would drop in there from his office? A. Well, occasionally, yes, sir.

Q. You were asked a question as to what you

knew about the verification of the reports to the Banking Commissioner; do you know anything at all about that? A. No, sir, nothing at all.

Q. You don't know whether it was checked up or verified or anything at all about it? A. No, sir.

Q. Now with regard to the questions that were asked as to whether any director or any member of the executive committee examined the books, you don't know whether the books were produced at directors meetings or at the meetings of the executive committee or not, do you? A. No, sir.

CROSS-EXAMINATION by Mr. Cornish:

Q. In the various examinations by the examining committee about which you have testified, you said that you run up the list of the individual deposit ledgers, and that then those lists were taken by the members, one or another member of the examining committee, and checked back with the deposit ledgers? A. Yes, sir.

Q. And what happened to them then? A. What happened to them?

Q. To the lists? A. Well, that is something I couldn't tell you.

Q. You do not know whether the members of the examining committee footed them up or not? A. What do you mean by footing them up?

Q. Add up the totals? A. That would be almost impossible, there were at least thirty-three hundred accounts.

Q. I asked you what you you knew about it? A. I told you I didn't know what happened to them after they had them.

Q. Now you said that on one or two occasions Mr. Smith told you in advance of the coming of the examining committee, that the committee was going to come and make an examination, and that you were to run up the ledger? A. Yes, sir.

Q. Do you remember which of these examinations that was? A. No, sir, I do not.

Q. It might have been early in the history of the bank or it might have been late? A. Well, it was during the period that I was on the ledgers.

Q. You don't remember the dates? A. No, sir, I do not.

Q. How many examinations were there while you were in the bank? A. Well, I came there April, 1910; they have two of them every year.

Q. That would be six? A. Six, yes, sir.

Q. Have you any distinct recollection as to what the members did on any one occasion as distinguished from another occasion? A. No, sir.

CROSS-EXAMINATION by Mr. Vanderbilt:

Q. Was there any irregularity in the Claflin account which you know of? A. No, sir.

Q. How many feet long were these lists, do you know, that you ran off from the individual ledgers? A. I couldn't tell that offhand.

Q. Well, five feet or ten? A. I couldn't tell you.

Q. How many accounts were on each list, approximately? A. I believe we had, I think we had thirty-three hundred accounts in the Roseville Trust Company at the time they closed.

Q. And about how many items can you put on a foot of this string of paper? A. Haven't the least idea.

Q. It must have been several feet long at least? A. Surely.

Q. These lists were correct, as made by you? A. Yes, sir.

Q. Do you know in each case that the adding machine was properly started, that is I mean as far as you know? A. Yes, sir.

Q. You said on one occasion at least that you were informed half an hour before the examiners came of their coming, by Mr. Smith; do you know how Mr. Smith secured his information as to their arrival, as to their coming? A. He told me he got a telephone message.

Q. He said he heard by telephone? A. Yes, sir.

By the Court: Q. Well, they came, did they? A. Yes, sir, they did.

Q. Within half hour after you were informed? A. Yes, sir.

Q. On the occasion of each of these examinations were you present at the bank as long as the examining committee stayed there or did you go home earlier than they did? A. Well, I believe after I run the ledgers and turned the list over to the gentlemen who took charge of checking them I believe I went home.

Q. That would be the end of your work for that day? A. Yes.

Q. So you don't know how long they stayed after you went home, or what they did after that? A. No, sir.

Q. Do you know whether any of the executive committee or any of the directors were in the habit of coming in the bank after banking hours and looking over the books? A. No, sir.

Mr. German: What is your answer, that you don't remember or that they didn't come in? A. Well, I don't remember, because as soon as I was through I went home; I don't know whether anybody came there after I was gone or not.

Q. Do you know whether any of the other employes stayed to see the examination through, or did they go out about the same time?

The Court: How could he tell?

Mr. Vanderbilt: He could tell if any went before him.

The Court: He can tell of course who were there at the time he left, but he cannot tell anything more.

Q. I will withdraw the question. What employes were left in the bank on the occasion of each of these examinations at the time you left? A. That I couldn't tell.

By the Court: Q. Have you stated all the books you kept personally? A. Yes, sir, the individual demand ledgers and the individual savings ledgers where the savings accounts are kept.

By the Court: Q. Anything else? A. Well, for a time, from a period some time I believe in 1911 during the summer months I kept the general ledger.

By the Court: Q. Did you keep any other books? A. No, sir, not that I recollect just at present.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. How old were you when you entered the employ of the Roseville Trust Company? A. About sixteen years old.

Q. One question which is not properly re-di-

rect-examination that I would like to ask. Do you recall in the instance of Mr. Armstrong's account the payment of checks which were not charged to his account? A. No, sir.

Q. You are here under subpoena? A. Yes, sir.

Q. Do you recall having testified in the case of the State against William C. Armstrong under re-cross-examination by Mr. McGraw as follows:

> Mr. Graham: I object to this as not being proper direct-examination, and he is trying now to break down his own witness by cross-examination.
>
> Mr. Hinds: That is true, your Honor, but under the circumstances here, and this being a court of chancery, I think the rule as to impeaching one's own witness should be relaxed where we are dealing with employees of the institution.
>
> The Court: Of course you can ask him with reference to the particular thing that is inquired about in that question, but I do not think that you can first call him and then impeach him; you knew perfectly well what he had said before, there is no surprise about it.

Q. You have stated that you didn't know of any irregularities while you were in the Trust Company; didn't you yourself make false entries, while in the Trust Company's employ? A. Two of them, yes, sir.

CROSS-EXAMINATION by Mr. German:

Q. What two false entries did you make? A. I made an entry on Mr. Scarlett's account and one in Jacob Dorer's savings account.

Q. How did you happen to do that? A. I did it under Mr. Smith's orders.

Q. When was that? A. I believe that Scarlett account was in 1912 and so was the Dorer, I believe both in the same year.

Q. How large were these changes, how large an amount? A. Well, the Scarlett entry was made to cover an overdraft, and the Dorer was made for the same purpose, to conceal an overdraft.

Q. Did you know at the time you were doing something that was not strictly regular? A. No, sir, I did not.

Q. Did you call anyone's attention to that, that is any director or officer of the bank? A. No, sir.

Q. Any employees of the bank? A. No, sir.

Q. Did Mr. Smith any time after that ask you to do anything in that nature? A. No, sir.

Q. When did you first find out that you had made this irregular entry, and knowing it to be irregular? A. About three or four months after the bank closed.

Q. Who called it to your attention? A. Mr. Mayhem, the man that had charge of the proceeding at that time.

Q. One of the banking examiners? A. Yes.

Q. Since you have left the employ of this Trust Company you have been employed by what bank? A. Savings Investment & Trust Company, East Orange.

Q. You are still there? A. Yes, sir.

By the Court: Q. I want to ask you a question with reference to these individual accounts. How often did you balance the account of the individual depositor? A. Each individual account?

By the Court: Yes, so that you would know what sums stood to his credit on the book? A. I would run a proof about every two weeks on each ledger.

By the Court: Q. Well, now, in the meantime how would anybody know, any officer, I mean, of the bank know how that account stood; suppose a check came in how would the paying teller know whether the account was good or not? A. Well, if he wanted to prove the account all that would be necessary to do would be to foot the debits and foot the credits and subtract the debits from the credits and that would give the balance and that should agree with what is on the third column in the ledger, there are three columns, debits, credits and balance.

By the Court: Q. Then he could not from the book, from a mere inspection, tell whether the depositor's account was good or not? A. Surely he could.

By the Court: Q. He could after performing that operation? A. Well, it all depends on the accuracy of the bookkeeper, if it is a good bookkeeper he doesn't make very many mistakes in his extensions.

By the Court: Q. I know that, but what I am calling attention to is this, you say that the amounts standing to the account of the individual depositor were ascertained by you about once every two weeks? A. Yes, sir.

By the Court: Q. Now in the meantime there might have been deposits or there might have been drafts; that is true, is it not? A. Yes, sir.

By the Court: Q. Well, then, when the paying teller went to the book for the purpose of finding

out how that account stood he would have to perform some addition, would he not? A. No, sir, not necessarily.

By the Court: Q. Why not? A. He could take it for granted that the amount then standing to the man's credit was correct.

By Mr. Stiefel: Q. You mean in the balance column? A. In the balance column.

By the Court: Q. Well, that would relate to his standing perhaps two weeks before?

Mr. Clark: Will your Honor glance at the sheet and you will see that the balance is struck each day in each account.

By the Court: Q. That is what I asked, and I understood him to say it was only struck about once every two weeks. A. I meant by that that the ledgers were written up, each individual account was written up to see whether the grand total agreed with what stood on the general ledger; for that ledger the accounts were struck every night, the balance was extended every night.

By the Court: Q. Well, now, that being so what I want to ask you is this: Do you recall any instance in which the account was overdrawn? A. Whose account do you mean?

By the Court: Q. The individual depositor? A. Any particular account?

By the Court: Q. I am not speaking of any particular name, but I ask you whether or not in any instance that you can now remember the account was overdrawn? A. Well, I had overdrafts, I always had overdrafts on the ledger.

By the Court: Q. Then do I understand that your accounts showed that the depositor had overdrawn his account? A. Yes, sir.

By the Court: Q. How often did that happen? A. Well, you take for instance if a man had a balance of $4.89 to his account and he drew a check for $5,.00; it wouldn't be good policy for a bank to send a man's check back for eleven cents shortage, and we paid that man the eleven cents over and sent him a notice.

By the Court: Q. I am not asking you about those insignificant amounts, I am talking about substantial amounts; did the depositor's account at times indicate that the depositor had overdrawn his account in a substantial way? A. Well, in that case, if there was any overdraft to be made I would have have to consult Mr. Smith or one of the officers of the bank for permission to pay such an amount over.

By the Court: Q. I do not ask whether you consulted Mr. Smith, I am asking you as to the fact, were there such overdrafts so that these individual accounts showed that they had been overdrawn and so that anybody going to the books could have seen that they were overdrawn if he had looked over them? A. He could have seen it if there were any overdrafts, but I don't remember any at this time.

By the Court: Q. Do you remember any, that is the point? A. I do not.

By the Court: Q. You do not remember that the books ever showed that any depositor had overdrawn his account to any substantial amount? A. Not at the present time, no, sir.

By the Court: Q. What do you mean by "not at the present time"? A. I don't remember at the present time; if I could look over the ledgers I maybe could pick out a few for you.

By the Court: Q. Well, do you think there are any? A. Well, I don't recollect.

Mr. Clark: F. Bruno?

A. Frank Bruno?

Mr. Clark: Your Honor will remember that this witness was part of the time only on the demand ledgers, and the great part of the time on the savings ledger, and it would not be under his direct knowledge.

The Court: I am speaking of what came under his personal observation; he was the bookkeeper.

A. Well, on an account under the name of Frank Bruno, on June 16, 1913, his account appears overdrawn here to the extent of $295.22.

By Mr. Hinds: Q. Is that your handwriting? A. That is my handwriting.

By Mr. Hinds: Q. Look on April 12th or April 11th, what do you find? A. I find he is overdrawn $994.07.

By Mr. Hinds: Q. The next day? A. $1,019.07.

By Mr. Hinds: Q. Your handwriting? A. Yes, sir.

By the Court: Q. What I want to know is whether those figures were put in at the time? A. They were put in at the time, yes, sir.

By the Court: Q. On the very day on which the overdraft occurred? A. Yes.

By Mr. Clark: Q. Are they put in in red ink? A. Yes, and distinguished from balances.

By Mr. Hinds: Q. Looking at the Frank Bruno account you find in red ink a large number of instances of overdrafts on every page? A. Yes.

By the Court: Q. Do I understand that wherever you put them in in red ink they are overdrafts? A. Yes, sir, they are overdrafts.

By Mr. Hinds: Q. Don't you remember other instances? A. I don't recollect them now; if you let me look over the ledgers I probably can pick them out for you.

By the Court: Q. Wherever you have put figures in red ink in the ledgers would they always indicate overdrafts? A. Yes, sir, in every instance.

By the Court: Q. That is the way you distinguish overdrafts from balances? A. Yes, sir.

By Mr. Stiefel: Q. You mean in the balance column? A. In the balance column.

By Mr. Stiefel: Q. You might have red ink footings? A. No, no red ink footings, but there might be items in the interest column that would be interest items and they would be in red ink.

The Court: This seems to open up quite an interesting inquiry. Here were the overdrafts distinctly indicated by figures in red ink, so that anybody going there would at once ask why what does that red ink mean, and if he asked the question he would be told that they indicated overdrafts.

Mr. Clark: I want to explain to your Honor that the comparatively small amount of the total loss was shown by means of overdrafts; the great bulk of the losses through Armstrong and these checks that were paid did not get into the individual ledger at all.

Mr. German: May I ask counsel at this time just what loss they claim, if any, by reason of the failure to check up these out of town depositors?

New Jersey State Library

Mr. Clark: It is impossible to separate the losses in any such classification as that at this time.

Mr. German: I desire to ask Mr. Clark as to whether they claim any loss by reason of the failure of the examining committee to do this?

The Court: I do not think they are bound to state what the loss was. The significance of those figures to me is in the apparent negligence of the directors in not finding those figures and in not making inquiries about them. I do not want to argue the matter now, but I say that if they have any significance it is in that direction.

Judge Collins: I think he is speaking of another subject.

Mr. German: I am not talking about this red ink.

The Court: Well, I am talking about the red ink, we are now on the red ink.

By Mr. Hinds: Q. I show you page 59, extending over to page 60 of the bill of complaint, a list purporting to be a list of accounts wherein overdrafts appeared and caused losses; will you look through that list and tell me whether there are any there which you now recall as having been instances where overdrafts appeared in red ink on the individual ledger?

Mr. Stiefel: I object, if your Honor please, the ledgers speak for themselves.

The Court: The ledger speaks for itself. The witness has told us now that wherever the red ink figures appear in the ledger they indicate overdrafts.

Mr. Stiefel: In the balance column.

Judge Collins: Not exactly that; he has said that overdrafts indicate red ink, but he doesn't say that red ink always indicates overdrafts; there are interest charges and other things that are in red ink.

The Court: You can find that out on cross-examination.

By Mr. Hinds: Q. Does red ink always indicate an overdraft? A. If it is in the balance column, yes.

By Mr. Hinds: Q. Do you recall overdrafts having appeared on the books in the instances of any of the names which you find in Exhibit F of the bill of complaint which you have in your hand?

Mr. Stiefel: I object.

The Court: I think the books themselves are the best indication. Here we have this account of Averill, the first name on Exhibit F; we have Exhibit F, and in that exhibit there are a number of names covering a page and a quarter perhaps, and that exhibit is intended for what purpose?

Mr. Hinds: To show the condition of overdrafts which resulted in losses; of course they do not pretend to show all the instances of overdraft that occurred in the bank which were on the ledger, but merely those which resulted in a loss.

The Court: The regular mode of examining this witness would be to call his attention to the particular pages of the ledger, and you may do that if you like up to a certain point for the purpose of illustration. The books will speak for themselves.

By Mr. Hinds: Q. Now is the book which you have in your hand one that was in regular use in the Roseville Trust Company? A. Yes, sir.

By the Court: Q. What book is that? A. This is the individual demand ledger of the Roseville Trust Company, running from N to Z.

Mr. Hinds: I offer that in evidence.

Marked Exhibit C-152.

By Mr. Hinds: Q. Now turn to the account of Newell; do you find instances of overdraft in that account in red ink, balance column? A. Yes.

By Mr. Hinds: Q. Turn to the account of J. J. Fusco? A. It wouldn't be in that, anything from N to Z is in here.

By Mr. Hinds: Q. It happens that most of the larger ones, that is, up in the hundreds, were in the earlier ledger, that is, the one up to M. Well, turn to the account of Paul, that is from N to Z, and see if you find any overdraft there, W. C. Paul. A. $431.19 overdrawn.

The Court: Well, that is only one of a number on that page.

By Mr. Hinds: Q. Now, I will give you the other; there are a large number but I won't bother with those under a hundred dollars. What is this book? A. This is the individual demand ledger running from A to G.

By Mr. Hinds: Q. This is already in evidence as Exhibit C-15. Turn to the account of J. J. Fusco, do you find any evidences of overdraft there? A. Yes, sir, quite a few of them.

By Mr. Hinds: Q. Any amounts over a thousand dollars? A. Yes, on January 20, 1913, he appears overdrawn $1,099.09.

By Mr. Hinds: Q. You find that condition existing repeatedly, do you not? A. Yes.

By Mr. Stiefel: Q. What was his balance when the account was closed, if any? A. He had a balance of $1,389.54.

By Mr. Stiefel: Q. So the overdrafts had been completely wiped out? A. Yes, sir.

The Court: Well, counsel must not imagine.

Mr. Stiefel: Well, that might not appear from the book; it might mean that those overdrafts still continued, I don't know.

The Court: The signficance of the overdrafts lies in the fact that they were permitted and that they were so clearly visible on the ledger that anybody looking at that ledger must have seen them. That is the significance of the evidence.

Mr. Stiefel: I do not want to interrupt this examination, but I understand from my own experience and from good authority that there is not a bank in this country in which overdrafts on the individual ledger are not shown. The trouble is not in overdrafts which are shown and permitted nor is it claimed in this case that any trouble arose from that; the trouble is in overdrafts which were concealed from the board of directors, small overdrafts in active accounts.

The Court: Well, you may argue that later.

By Mr. Hinds: Q. Turn to the account of Isaac Katzman. A. That is not in here.

By Mr. Hinds: Q. Well, you have the one in F now? A. Yes.

By Mr. Hinds: Q. Turn to the account of G. R. Ford. A. That is overdrawn $107.37.

By Mr. Hinds: Q. That is at the close of the institution? A. Yes.

By Mr. Hinds: Q. Do you find several instances? A. Yes, he has been overdrawn several times previous to that time.

Mr. Hinds: Having introduced these books in evidence we will summarize this by an expert in concise form; I won't press it any further with this witness.

By Mr. Hinds: Q. Did you know who G. R. Ford was? A. Yes, I believe he was in the C. C. Lurich Company.

By Mr. Hinds: Q. And that is C. C. Lurich, one of the directors? A. Yes, sir.

CROSS-EXAMINATION by Judge Collins:

Q. Overdrafts are common in all banks, are they not? A. Yes, sir.

Q. And you may assume, I suppose, that when a check comes in that overdraws a man's account that he don't know of it, and so you don't like to protest his check and charge it up and send him word to make good? A. Yes.

Q. That is constantly done in all the banks? A. Yes.

Q. Done in the bank you are in now? A. Yes.

Q. So in order to keep your daily balance column in the individual ledger right, where it is an overdraft you put it in red? A. Yes.

Q. If it is not in red then that is a balance in his favor; if it is in red it is a balance against him? A. Yes.

Q. Generally made good the next day or as

soon as the man gets word? A. Yes, in most cases.

Q. How many accounts were there in the bank at about this time that your attention has been directed to? A. Thirty-three hundred.

Q. And perhaps in the whole thirty-three hundred there might be a few cases of overdrafts that have been spoken of here? A. Yes.

Q. And a man to find them would have to turn the pages of these two great big ledgers from A to Z? A. Yes, A to F, and then from F to Z, I believe they run that way.

Q. F to N and N to Z? A. Yes.

Q. Three of them, aren't there? A. Yes.

Q. If you turn the leaves of all of them now and then you can see red ink entry in the daily balance column? A. That is right.

Q. As I understand it, perhaps you know, the loss claimed from overdrafts in this case before us is very small, is it not? A. I don't know anything about that.

Q. Well, it will speak for itself of course, but it is comparatively small. It is only, I take it, that where an overdraft is large that it signifies anything that needs attention? A. Yes, sir.

Q. And if when the check comes in it is large you won't honor the check, will you? A. No, sir.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. You have said on cross-examination that it is a common thing in all banks for overdrafts to occur, which are permitted as a matter of courtesy or convenience to depositors; is that the case in all banks where an overdraft occurs repeatedly and in sums from one hundred to a

thousand dollars? A. That would not occur repeatedly, no, sir, it would not be permitted.

Q. And in that bank which you are now in, concerning which you have testified on cross-examination, if five or ten times in succession a depositor's account was overdrawn say five hundred dollars that would not be permitted thereafter, would it? A. No, sir.

The Court: I do not suppose it would be permitted at all, I understand it is against the law.

Judge Collins: Only for directors, it is against the law for directors to overdraw, but the law itself presupposes that the depositor may overdraw, it is a loan to him really; no bank would refuse to honor a man's check if he was a good man.

The Court: Oh, yes, overdrafts for a small amount, I take it, are common, for a small amount, but in the book as it has been shown here there are a large number occurring continuously.

Judge Collins: The question of being small or large is relative, depending very much on the magnitude of the account and the character of the individual. A great many men depend on the bank to keep their accounts for them, and they send a check out knowing that if they do overdraw word will be sent them and they will make it good, and it might be five hundred, a thousand or two thousand, or it might be small, depending on the character of the man and the amount of his overdraft. I do not think directors would be presumed

to look through this great mass of individual accounts, would have to look at every man's account.

Mr. Hinds: If your Honor please, that is exactly what the directors were required to do in making their examination by the the committee. I will ask the witness, as an example, in the account of Frank Bruno do you find any overdrafts on the page containing the date May 21, 1913?

A. No, sir.

Q. On the page which contains that date don't you find any overdrafts? A. Oh, yes.

Q. How many do you find on the page above the date May 21, 1913? A. Eleven overdrafts.

Q. And at least one of them is over a thousand dollars? A. Yes, that is correct.

Q. And several in the hundreds? A. That is correct.

CROSS-EXAMINATION by Judge Collins:

Q. You do not mean to say that on the day the examination was made—it does not affect my client but while I think of it I will ask the question in May, 1913, that Bruno's account was shown overdrawn on that day? A. No, sir, it was not overdrawn.

CROSS-EXAMINATION by Mr. Congleton:

Q. As a matter of fact on that day, according to the ledger, he had a balance on May 21st, of over $2,000? A. Yes, that is correct.

Q. Now in this account, your Honor, in this schedule that they have been calling attention to, schedule F, they list Bruno's overdrafts at $6,-

096.56. Mr. Mindnich, the ledger doesn't show when the bank closed that there was any overdraft at all in that account, does it? A. There has been no extension made on that account.

Q. There is nothing in red ink on this ledger showing any overdraft after the twenty-seventh day of June, is there? A. No, sir.

Q. And the last balance which has been extended, which is under the date of July twenty-eighth, is it not? A. Yes.

Q. Shows that this account had a balance of $5,856? A. Here is the balance.

Q. This balance here (indicating), isn't that it? A. You see that check has to come off here, that check has to be withdrawn; there is the balance, $1,892.

Q. $1,892, after deducting the $3,900 check? A. Yes, and of course that has to come off too (indicating).

Q. That wasn't there on that day? A. Sure it was, that was there when the bank closed, certified check that hadn't been extended; if that check had been extended it would overdraw that account, if that check was taken off that balance there his account would be overdrawn some six thousand dollars; here it is, right there (indicating).

Q. Whose writing is that? A. That is not mine.

Q. Do you know whose it is? A. Yes.

Q. Whose? A. Mr. Brennan's.

Q. He was there, a young boy, as a bookkeeper? A. He was a bookkeeper.

Q. This has never been carried out? A. Never been extended, no, sir.

By Mr. Hinds: That is the part of our claim that consists of overdrafts, but I believe this is one of the accounts, but I bechecks were paid but not charged; so there were both conditions in that account, and in several of the others also, your Honor.

RAYMOND E. SMITH, sworn:

Direct-examination by Mr. Hinds:

Q. You were the secretary and treasurer of the Roseville Trust Company? A. Yes, sir.

Q. When did it first come to your attention that the Trust Company was being organized? A. I think it was in the spring of 1908.

Q. You were one of the subscribers to its stock? A. Yes, sir.

Q. To what extent? A. Why when the bank opened for business I think I had one hundred and seventy-two shares, something like that.

Q. At the par value of $50? A. Of $150.

Q. Of $150 each? A. Yes.

Q. Did you borrow on that stock? A. Some of it, yes, sir.

Mr. German: Borrowed when?

Q. At the time you bought the stock? A. I borrowed on some of it, yes.

Q. When did you enter the employ of the Trust Company? A. December 1st, 1908, I think.

Q. And what duties did you perform?

The Court: Well, is it worth while to go into what has been so thoroughly established? It is not worth while to prove an admitted fact by more than one witness.

Q. Now I show you the minute book of the company and ask whether that book was in the same condition, so far as you know, at the time the institution closed that it was during the prior period of its existence. I am not now asking about its condition now, because I understand it has been out of your possession, but at the time the institution closed it had not as far as you know had any changes or abstractions made in it or from it? A. The only abstractions made from it was I should say a hundred pages or so taken out, consecutively numbered, so as to allow room for new pages in the binder.

Q. Are these the pages you refer to, the ones which have been marked C-8, being 055 to 100? A. I think that is.

Q. No. 1 to 100? A. Yes, that is the bunch that were taken out.

Q. And with that exception the book remained in the same condition up to the time the bank closed that it had as written up from time to time? A. You mean as to pages, etc.?

Q. Yes, as to pages, and as to any changes being made in the pages? A. It remained the same, as far as I know.

Q. What was the practice of the Trust Company as to the preparation and keeping of those minutes. In the first place, who kept the minutes? A. I kept them.

Q. After each meeting when did you write up the minutes? A. The following day as a rule.

Q. And were those minutes read at the next meeting of the executive committee? A. Yes, sir.

Q. And in the instance of directors meetings,

were the minutes not only of the executive committee but of the directors read and approved? A. You mean the minutes?

Q. Yes? A. The minutes were read as spread upon the minute book at each meeting, both the last full board meeting and the meetings intervening of the executive committee.

Q. And was that invariable? When you said as spread upon the minute book you were referring to what was read? A. Yes, sir.

Q. And not what was recorded as having been read, is that right? You were referring then to what was—A. I was referring to what was spread upon the minute book as the minutes of the last meeting or meetings.

Q. You are not referring to what was spread on the minutes in the meeting at which it was read, are you? A. No, sir; that would be read at the next meeting.

Q. Did you present a report to the executive committee at each meeting?

Judge Collins: I object to that; the executive committee minutes would show.

The Court: I do not know whether they will or not. I think the question is perfectly proper. It has been stated over and over again in the books that what took place at a meeting of directors may be proved in two ways, it may first be proved by the minutes and may secondly be proved by the recollection of those who took part in the meeting, and one kind of evidence is not inferior to the other, they stand up on the same plane.

Judge Collins: My understanding is dif-

ferent, I think the cases hold you must first show the minutes.

The Court: I do not so understand the rule. I understand that any person present at a meeting of the directors may give evidence as to what occurred at that meeting. Minutes are frequently kept in a very inaccurate way, kept some times by people who do not know how to keep them, other times by people who make up the proceedings of the meeting perhaps days and weeks afterward, and other times by people who take no pains at all in trying to be accurate, and unless I am entirely mistaken the rule is as I have stated it, and I shall rule on this evidence according to what I understand to be the well settled rule of evidence on this subject.

Mr. German: I object to any evidence of this witness as to what took place at a meeting unless it is recorded on the minutes, unless it appears from his evidence that it was the general practice for the directors to transact business which is not on the minutes, or unless his attention is called to any particular meeting at which this outside business is alleged to have taken place.

The Court: There is no difficulty at all about this matter; if I am wrong in my ruling I will myself exclude the evidence from consideration when I come to consider the case, and if I make a mistake then why the Court of Errors will doubtless correct me.

Q. The question was as to whether you as a rule, and according to the practice made a report to the members of the executive committee at their meetings? A. I did.

Q. Verbal or written? A. Written.

Q. Did any of the directors make any examination of the books or records with a view to verifying the correctness of the reports or any of them?

Mr. Stiefel: I object, if your Honor please. I want the question directed to what happened, I want to know what happened at those meetings.

The Court: Mr. Smith is an intelligent man and he will understand, and I will instruct him, if you like, to testify only as to what he observed at the meetings at which he was present.

Judge Collins: Now, if your Honor please, I make an objection on a different ground. I represent Mr. Dunn, a director only; he was never a member of the executive committee. Mr. Hinds has blended the things together; executive committee and directors; they occupied entirely different footings.

The Court: Well, I agree with you that they better be kept separate, in view of the fact that every man is responsible for his own negligence, and not for the negligence of other people. Now separate your question so as to call his attention first to the meetings of the executive Committee and afterwards to the meetings of the Board.

Q. Well, now, let me ask first, Mr. Smith, whether the reports which you submitted to the executive committee were or were not later submitted to the meeting of the full board? A. They were, I think.

Q. Did any member of the board of directors, whether member of the executive committee or not—I think is all right now, your Honor—verify the correctness of any such report from an examination of the books?

Judge Collins: I object.

The Court: Why not ask whether any member of the executive committee did it.

Q. Now, first let me see whether Mr. Smith is uncertain or not. What is the fact, Mr. Smith, as to whether the reports themselves that you presented to the executive committee were presented to the directors at their full meeting? A. Well, the reason I said I thought so was because there are two reports; there were two reports given to the executive committee as a rule, one was the report of condition, and the other a report of bills purchased, a schedule rather of bills purchased during the week; the schedule of bills purchased I know was given to the full board, but whether al the statements of condition were given to the full board as given out at each meeting of the executive committee I cannot say, I am not sure of it.

Q. Did you present to the meeting of the board any statement of condition, as a rule, according to your practice?

The Court: Leave out the latter part of that.

A. Why I don't think I gave them any printed form, as I did in the executive committee, but I read off from the minutes a general review of the statement as it was incorporated in the minutes after each meeting.

Q. Now, did any member of the executive committee examine the books or records of the Trust Company with a view to verifying the correctness of the report of condition at any time? A. I have never seen any member of the executive committee verifying this statement which I submitted at any meeting of the executive committee.

Q. Now I show you a paper and ask if you can say what that is? A. Why I should say that is a copy of one of the statements which I gave to the executive committee on the first of July or the meeting nearest that date.

By Mr. Judge Collins: What year? A. I cannot tell, the date is not on it.

Q. Was that the form which you employed in those statements generally? A. Yes, sir.

Q. Was there any original, Mr. Smith, other than what I showed you? A. Why I don't quite understand what you mean by original in this case.

Q. Well, was there any one of the numerous duplicates which you could designate as an original and one a copy?

The Court: Why do you not let Mr. Smith explain how these statements were prepared, who prepared them, and how they were distributed.

Q. Will you do so? A. These statements were prepared by the stenographer.

By the Court: Q. Her name? A. Miss Hicks;

from the general ledger, and on the left-hand side of the statement there is a statement that shows the condition, the previous week report of condition, and on the right hand shows the condition at the present week, giving the committee a chance to compare figures one week with another.

Q. I observe certain alphabetical marks there, what do those figures A, B, C, and so on, represent? A. Those were simply symbols. That matter was talked over in the committee and it was thought best to use symbols as various members of the committee would carry these on their person for a while and might possibly leave them outside of the bank, and somebody get hold of them and would have an insight into some figures that really were not for publication at that time; that is the reason it was done.

By the Court: Q. I do not quite understand. You say that these statements were prepared by Miss Hicks. Do you mean that she went to the books and got the figures, or do you mean that you gave or dictated the figures to her? A. No, sir; as I remember it, your Honor, the stenographer, Miss Hicks, copied this statement right from the ledger.

By the Court: Q. And then how many copies did she make? A. She made one for each director.

By the Court: Q. And what did she do with them? A. She gave them to me with the minutes.

By the Court: Q. And what did you do with them? A. I distributed them among the committee.

By the Court: Q. At the executive committee meeting? A. Yes, sir.

By the Court: Q. Now can you identify the paper before you as being one of the copies that she made for distribution? A. Well, it has the appearance of one of them, that is all I can say.

Q. In what order were the A, B, C, D items given on the report, in relation to the order on the general ledger? A. In their relative order.

Q. Will you state whether on the occasions when the full board met they met in the sa room where the executive committee had met just previously? A. Not at all times, at all times in the same room, yes, but it didn't always on the same day.

Q. When it was on the same day were there available on the table copies of the report of condition to the directors?

By Judge Collins: Q. The executive committee I think met every week, didn't they? A. Yes, sir.

By Judge Colins: Q. And the directors once a month? A. Yes, sir.

Judge Collins: Now he says that some times the directors met in the same room where the executive committee had just been having a meeting, but not always; now he is asked whether on the occasions they did not happen to meet on the same day these reports which were given to the executive committee, which he already said they put in their pocket and took home with them if they liked, were lying on the table. I think it is too indefinite.

The Court: Well, that relates to the strength of the witness's memory; if he cannot remember he can say so; if he does

remember that he saw copies lying on the table which the directors, as distinct from the executive committee, could have availed themselves of, he can say that. It is a question of memory, and you can cross-examine on that. What was your observation?

A. I do remember, your Honor, that at times there were some papers on the table at the time the full board met right after a meeting of the executive committee. It was the custom, however, of several of the members of the executive committee to keep these reports in their pockets; I know that, I know that is true; Munroe always carried his with him, if I remember rightly.

Q. Anybody else that you remember? A. I think Mr. Odell took his with him.

Q. Now, Mr. Smith, about the making and approving of loans. The minutes show, we have found, that from day to day the executive committee would approve a list of bills purchased which had been purchased during the week, and I desire to know whether those had already been purchased or whether the approval was the approval of something to be purchased after the meeting?

Mr. Congleton: You mean from week to week?

Q. Yes, I mean day to day. A. The approval? I didn't quite get the gist of your question.

Q. Perhaps I can make it clearer. Did the executive committee approve what you had already done or did they approve something which you recommended should be done? A. Well, where

the bills purchased were entered on the minutes as approved during the week they approved the loans already made.

Q. And in any instance where the loans had not already been made is there a separate discussion of those recorded on the minutes?

Mr. Collins: I object to that on the ground that the minutes will show.

Mr. Hinds: I don't know what to look for yet, until I have his testimony as to what the course of the keeping of the minutes was, I want to find out. He says that in some instances the loans had already been made and then were approved by the executive committee, implying that there were other instances where they hadn't been made, but the committee was asked to approve some and that he hoped to make or was intending to make later. I want to find out whether those were separately discussed and separately recorded in the minutes and appear as such, so that in reading the minutes it will be intelligible.

The Court: It is not worth while to ask the witness what there is in the minutes; the minutes speak for themselves.

Q. Then I will show you at random the minutes of the executive committee meeting of June 18, 1912, wherein it says: "Bills purchased during the week were approved as follows" after which follows a list of twenty or thirty loans. Now had those loans already been made prior to the meeting of June 18, 1912? A. Yes, sir, they had.

Q. And I observe that some of them are over a thousand dollars; your answer applies to those as well? A. Yes, sir.

Q. Is it a fact that according to the practice in the Trust Company you received the approval of the executive committee before making a loan if it was over a thousand dollars? A. No, not always.

Q. Now were there loans, Mr. Smith, which were approved before they were made? A. There were some, yes, sir.

Q. And can you look at the minute book and find in the minutes any instances of approval in advance of making a loan? Before looking I will ask you whether the minutes would indicate any distinction, if there were such, between those which had already been made and those which were to be made after approval? A. They would be listed separately.

Q. Now will you find me an instance of that, if you can, an instance where they were made after being approved? A. I have one on page 377.

Q. That is the meeting of July 2d, 1912? A. Yes, sir.

Q. And which loans there do you find had not already been made? A. I find this in the minutes: "Motion was made by Mr. Banister, seconded by Mr. Lurich, that the matter of a loan of $25,000 to International Tobacco Company be left to the judgment of the treasurer."

Q. That was the subject of a separate motion then, Mr. Smith? A. Yes, sir.

Q. Was that the practice respecting all loans which had not already been made at the time the committee met? A. All loans?

Q. Was it the practice respecting the loans that had not been made at the time the committee met to put it in the form of a separate motion?

The Court: I do not understand that, what do you mean?

Q. I find here a long list headed bills purchased during the week were approved as follows. Then in the one instance where a loan had not already been made we find that the subject of a separate motion, and I ask whether that was the general practice to make a separate motion on loans which had not already been made?

Judge Collins: By the officers you mean?

Q. By the officers, before the committee met? A. You mean on all new loans that went through the institution?

Q. All loans which had not already been made before the committee met were the subject of special motions? A. No.

Q. Now will you find instances, if you can, of any which were not matter of special motion and which had not been already made when the committee met. That is what I want to find out. A. Here is one of $50, right there at the head of the page 378.

Q. Those under the heading of bills purchased during the week were approved as follows, and at the top of the column, and you say that loan had not already been made prior to the committee's meeting? A. Had already been made, yes.

Q. And all of those in that list had been made? A. Yes. But that wasn't his question, as I understood it.

The Court: I do not know whether I understand this or not. I have got the im-

pression from the testimony of one of the witnesses that up to a certain amount, I think it was $1,000, the treasurer was authorized to loan at his discretion; above $1,000 the matter was submitted to the executive committee. I think the witness stated that while that was the rule it was not always observed with respect to amounts above $1,000. Now, if I am mistaken about that of course I want to be corrected.

Mr. Clark: The fact is that the witness testified just that way, and the minutes show just that way, shows that week after week the matter of loans is referred to with this introduction: "Bills purchased during the week were approved as follows," and then follows a detailed list with items of varying sorts, in very many cases above $1,000, and as we pointed out in the previous hearing there was one of $15,000.

Mr. Congleton: That very one of $15,000, if you will look at the minutes of the week before you will you see it was submitted to the board. Winslow.

Mr. Stiefel: Those minutes do not show what action the executive committee took at their respective meetings with regard to paper which had been submitted during the course of the week for approval. These minutes, as inspection will show, were of a formal nature, simply to make formal record of approvals, and do not show what discussion took place in executive meetings with regard to paper which

was submitted, and probably in the hands of Mr. Smith, and if Mr. Smith was only asked to tell what took place in the executive meeting all that could be brought out.

Mr. Hinds: I did ask that question and objection was made and I withdrew the question. I did want to find out what did happen other than was shown in the minutes and I was not permitted to bring that out; if it had been brought out it would have thrown more light on this subject.

Q. I show you what purports to be a pass book and ask you if you can identify that? A. I can, yes.

Q. What is that? A. That is pass book No. 793, Special Department, Roseville Trust Company, in the name of Emma E. O'Connor.

Q. In whose handwriting is the name on the outside? A. In my handwriting.

Q. In whose handwriting are the entries on the inside? A. The first entry is in my handwriting.

Q. The date? February 23, 1910.

Mr. Hinds: Now I offer that in evidence.

Marked Exhibit C-153.

Judge Collins: What is the purpose?

Mr. Hinds: One step in an irregular transaction.

Q. Now I show you a draft and ask you if you can identify that? A. Yes, this is a deposit ticket

Q. What is that? A. This is a draft of $3,000 on the Special Account No. 793, dated December 12, 1910, signed by Emma E. O'Connor, per R. E. S.

Q. The per R. E. S. is in your handwriting? A. Yes.

Mr. Hinds: I offer that in evidence.

Marked Exhibit C-154.

Q. The entire draft is in your handwriting also? A. Yes, the whole thing.

Q. And the R. E. S. is your initial signature? A. Yes, sir.

Q. I show you a deposit ticket and ask if you can identify that? A. Yes, this is a deposit ticket which is in my handwriting, the same number and the same name, the same amount, $3,000.

Q. I observe there is no date on that, and I ask you whether you can identify that as the ticket corresponding to the draft which you have just referred to? A. No.

Q. Now I show you the individual ledger account of Emma E. O'Connor and ask you if you recognize that as a book regularly in use in the Roseville Trust Company? A. Yes, sir, I do.

Q. And I ask you to turn to the twelfth day of December and find whether you find any withdrawal of $3,000 by her on that date? A. 793, isn't it?

Q. No. 793 is the pass book? A. There is a withdrawal of $3,000 on that date, December 12, 1910.

Q. Now I ask you to look in her pass book and find whether there is an entry there of a withdrawal of that amount on that date? A. No, sir.

Q. Or any amount on that date? A. I don't see any at all.

Mr. Hinds: I offer the ledger in evidence.

By the Court: Q. Who kept this ledger that is now before you? A. Why at that time, your Honor, Mr. Thompson.

Marked Exhibit C-155.

Judge Collins: Mr. Dunn was not a director at that time. I am groping in the dark a little, I suppose it is a sample of other evidence that may come at a later date; I do not quite understand the bearing of it; counsel ought to state.

The Court: What do you say to that?

Mr. Clark: We are going to ask him what the facts are concerning that transaction.

Q. The transaction on its face shows that the books show a withdrawal to have been made, the books of the bank, and there appears to be a draft initialed by Mr. Smith but not signed by the depositor for the amount of a withdrawal but her pass book doesn't show that any withdrawal was made by her. Now I ask Mr. Smith to tell us what he knows of the fact of that transaction? A. On the 12th of December, 1910, I think, the date of the draft, there were $3,000 extracted from Mrs. O'Connor's account to pay something else, I don't remember just what it was; there was no intent to imitate her signature at that time at all, it was simply a charge ticket, which right any officer of the bank had as a rule to charge any account in case a note came due, for instance, it was customary for an officer to charge an account with it, if they had no voucher for it.

Q. I did not intend to convey the impression that there had been any imitation of the signature, simply that it was in his handwriting? A. I do not remember what the money was used for, but later on the money was put back in Mrs. O'Connor's account, as that ticket shows; there is no date on it, I can't remember the date the account was reimbursed.

Q. The facts I have referred to, do they enable you to say whether or not she did actually make a withdrawal of $3,000 on that date?

Judge Collins: Objected to as entirely unimportant. It now develops that while there was this irregularity the money was put back to her account.

The Court: It seems to me the proper question would be whether Mrs. O'Connor got the $3,000 or whether somebody else did.

Judge Collins: Well, she got it later.

The Court: Well, afterwards, but I am speaking of getting it at the time. $3,000 were taken; now were they taken for Mrs. O'Connor's benefit or for the bank's benefit or somebody else's benefit. Mr. Smith says that the money was put back, but counsel has the right to ask the question what the $3,000 were taken out for, was it taken out for Mrs. O'Connor's benefit or some other purpose?

A. Your Honor, I think I answered that question in the last answer; I said that the amount was abstracted from Mrs. O'Connor's account but I couldn't remember for what use it was put.

By the Court: Q. Then it was not taken out for her benefit? A. She didn't draw the money, no, sir.

Q. Can you say whether or not at the time the money was retored to the O'Connor account it was taken from some other account? A. I can't say that.

Q. Can you say that it might have been?

Judge Collins: I object.

The Court: No, that will not do.

Q. Can you state of your own knowledge that there was a restitution of that money, or do you merely refer to a later credit having been made in her account? A. The account was reimbursed, that is all I know.

Q. Was that reimbursement with money or by means of another irregular credit, another irregularity entered and credited? A. It was reimbursed by a credit but I don't know the nature of that credit at all.

Q. Now I show you the pass book of P. J. Clossick, can you identify that. The number of the pass book account is 1433; is that his book? A. Yes, sir.

Q. Is it labeled on the outside in your handwriting? A. It is.

Mr. Hinds: I offer the book in evidence.

Marked Exhibit C-156.

Q. I call your attention to a deposit on that date of $4,000 is that in your handwriting?

Judge Collins: What date?

Q. January 11, 1911? A. Yes, sir.

Q. Having refreshed your recollection can you say whether or not Mr. Clossick deposited $4,000 on that date? A. I believe he did, yes.

Q. Now I show you a deposit ticket, can you identify that? A. Yes, sir.

Q. Is that in your handwriting? A. It is.

Q. What is that? A. P. J. Clossick, book No. 1433, January 11, 1911, $1,000.

Q. Now I show you the individual ledger C-155, the account of P. J. Clossick, and ask what you find there on that date? A. January 11, 1911, $1,000 credit.

Q. What were the facts of that transaction?

A. Why, the facts were that he deposited $4,000 and got credit for $1,000.

Mr. Hinds: I offer in evidence the deposit ticket.

Marked Exhibit C-157.

Q. I show you five pass books, Nos. 1651 to 1655 inclusive, and ask you what those are? A. They are pass books of the Roseville Trust Company Special Department of A. Magnani, administrator; they are all in my handwriting.

Q. Will you look in each of those pass books under the date of April 25th, 1911, and state what you find? A. April 17th?

Q. April 17, 1911, yes. A. I find a deposit in book No. 1651 on that date of $452.

Q. Yes, and the next one? A. No. 1652, a deposit on the same date of $1,99.12. No. 1653 a deposit of $1,199.12. On No. 1654, deposit on the same date of $598. No. 1655, on the same date a deposit of $529.10.

Q. Having refreshed your recollection from those pass books can you say whether or not those deposits were made on that date by Magnani, administrator? A. They were, yes, sir.

Q. Now turn to the five ledger accounts, Nos. 1651 to 1655 in the individual demand ledger and see whether you find any deposits recorded on April 17, 1911? A. No, except one dollar each.

Q. On what date does that appear in each account? A. April twenty-fifth.

Q. And nothing on April 17th? A. No, sir.

Mr. Hinds: Now I offer in evidence the five pass books.

Marked Exhibits C-158, C-159, C-160, C-161, C-162.

Q. Now I show you another pass book and ask you what that is? A. That is book No. 1656, the same, A. Magnani, administrator.

Q. Do you find a deposit on April 17, 1911? A. Yes, sir.

Q. How much? A. $737.76.

Q. And did he deposit that money? A. Yes, sir.

Q. I show you a deposit slip, can you identify that? A. Yes, sir.

Q. Is that in your handwriting? A. It is.

Q. What is the date? A. 18th of April, 1911.

Q. And the amount? A. One dollar.

Q. Can you find his account in the ledger? A. Yes, sir.

Q. Corresponding to that book? A. 1656.

Q. And what do you find there on April 17th or 18th? A. Nothing.

Q. And on the 25th of April, 1911? A. Deposit of one dollar.

Mr. Hinds: Now I offer in evidence pass book 1656 and the deposit ticket which he testified to.

Marked Exhibit C-163 and C-164.

Q. These ledger pages are found in book Exhibit C-111. Can you identify this pass book? A. Yes, sir.

Q. What is that? A. That is pass book of the Roseville Trust Company, Special Department No. 1654.

Q. In whose name? A. A Magnani, administrator for Angelo Triano.

Q. Do you find that a deposit was made in April, 1911? A. April 17, $1,320.58.

Q. And did he deposit that money? A. Yes, sir.

Q. And that was in addition to the deposits that you have referred to in the other pass books? A. I don't know whether we had a number 1654 before or not.

Q. The pass book marked Exhibit C-159, numbered 1654, I show you, to which you have just testified, was the deposit in this 1654, Magnani, as administrator of Triano, in addition to the deposit of $598 which you testified to in connection with Exhibit C-159? A. No, sir, to the best of my knowledge.

Q. Will you explain the fact that on the same date in two different pass books, the same name and same number, there appeared a deposit of $589 in one and of $1,320.58 in the other? A. Why to the best of my recollection one of these books was lost, or not lost rather, one of them was brought back to me as having the wrong amount entered.

Q. What do you find on the ledger on that date? A. One dollar, the same as on 1654. There is only one account of 1654.

Q. Now finish your explanation. A. Mr. Magnani, as I remember, brought back No. 1654 and said the wrong amount had been entered, and I found that was true and I gave him a duplicate book, and this book, as I remember it laid on my desk, should have been destroyed.

Q. Referring to Exhibit C-159. Then the duplicate book of the larger amount $1,320.58 contains an entry of the correct deposit on April 17, 1911? A. That is as I remember it.

Mr. Hinds: I offer this in evidence.

Marked Exhibit C-165.

Q. I call your attention to the facts as you testified to when shown those pass books, Mr. Magnani, as recorded in his several pass books, made substantial deposits, whereas in the later accounts only one dollar is recorded as having been deposited, and that several days later; does that refresh your recollection as to what happened to the money? A. Just at that time, no.

Q. Did the Trust Company get the money? Will you explain those transactions? A. As near as I can remember it they amounted to two or three thousand dollars. Mr. Magnani came in the bank and had the money already in his account, and he wanted to divide it up as administrator for these various people, and he gave me his check on the Roseville Trust Company for the total of all these deposits and I opened the accounts as suggested by him, but I did not credit up the accounts except with the dollar, just to open the account, that was all; later on the accounts were closed entirely by Mr. Magnani, and he got the money from these various accounts.

Q. Now do you find any deposits of any substantial amount in any of those Magnani accounts in the ledger at that or any subsequent date? A. No, sir.

Q. Now what happened to the proceeds of that check of Mr. Magnani's? A. I don't remember what happened to it; it was used for other purposes than it was given.

Q. When Mr. Magnani withdrew those funds from the Trust Company was the money replaced?

Mr. Stiefel: Was what money replaced?

A. In what way?

Q. When he withdrew the funds where did you get the funds to pay him? A. I couldn't tell you that.

Q. You didn't get it from his account? A. No.

Q. Now I show you pass book No. 1697, and ask you if you can identify that? A. Yes, sir.

Q. What is that? A. Pass book No. 1697, Roseville Trust Company, Special Department.

Q. Account of whom? A. Felix Cardone.

Q. And what do you find there on May 4, 1911, what do you find in the pass book? A. On the pass book there is an entry of $6,000 on the fourth of May, 1911.

Q. The only deposit appearing in the pass book? A. Yes, sir.

Q. Is that in your handwriting? A. Yes, sir.

Q. Can you say whether or not Mr. Cardoni did deposit six thousand dollars on that date? A. He did not, in money.

Q. What fact does that deposit entry signify to you, having your recollection refreshed? A. Why, Mr. Joseph Federica, who is a brother-in-law of Felix Cardoni, came to me one day with a note signed by Federica to Cardoni for $6,000, and as I recollect it, Federica, he said that he owed his brother-in-law $6,000 and he was going, his brother-in-law was going to the old country and he wanted to settle up with him before he left, or give him some kind of a note or something that would secure him, and wanted to know if I would discount the note for him, and he agreed to leave it as a special deposit while he was on the other side, and I agreed to do that. Well, the fact is the note never went through and neither did the deposit, simply gave Cardoni this book to satisfy him, that is all.

Q. Do you find any account of Cardoni in the individual ledger? A. No—well, I haven't looked for it.

By the Court: Q. He never drew upon that? A. Not until later when he came back from abroad.

Q. Where did the funds come from with which to pay him when he drew it out later? A. Why as I recollect it, we used the note finally after Cardoni came back, I think it was a demand loan, demand note.

Q. What do you find in the individual ledger? A. 1697?

Q. Yes. A. No account there at all, no.

Q. Do you fin any in 1696? A. Yes.

Q. 1698? A Yes.

Q. Can you say whether or not that account was ever opened? A. I don't think the account was ever opened, that is my recollection.

Q. Was that note reported to the board of directors or the executive committee? A. I think not.

Q. Mr. Smith, did Mr. Cardoni withdraw out the sum of $6,000? A. I believe he did, yes, sir, different times.

Q. Can you tell me how much on each date? A. $3,000 on the twenty-fourth of August, I presume it is the same year, 1911; it is not stated here what year it is; $2,00 on the twenty-eighth of November, and $1,000 on the twenty-third of January.

Q. The following year, whatever the year was? A. It was later, anyhow, than the other two withdrawals.

By the Court: Q. Can you tell us what became

of the note? A. I think the note was discounted, your Honor, eventually and included in our notes in the bank.

By the Court: Q. Was the note paid? A. I can't remember that, I don't think it was paid up to the time the bank closed.

Mr. Hinds: We expect to show the significance of all the book entries later in concise summarized form by an expert. We do not expect Mr. Smith to have a comprehensive recollection of all these various transactions. I offer this book in evidence, 1697.

Marked Exhibit C-166.

Q. I show you another pass book and ask you to state what that is? A. Pass book Roseville Trust Company, Special Department, No. 115, in the name of Rachael R. Sharwell.

Q. Is the name in your handwriting on the outside? A. No, sir.

Q. Now, will you turn to December 18, 1911, in the pass book and state whether or not a deposit was made on that date? A. Yes, sir, there was.

Q. How much? A. $5,112.80.

Q. And did the depositor actually deposit that money? A. Yes, sir.

Mr. Hinds: I offer this in evidence.

Marked Exhibit C-167.

Q. Turn to that account, Sharwell, No. 115, in the individual eldger, and state whether you find any record therein in the ledger of a deposit having been made on that date of that or any other amount, December 18, 1911? A. No, sir, I see none here.

Q. I am referring to book C-155.

Mr. Stiefel: Is there any record in any book of this now?

Mr. Hinds: You can bring that out on cross-examination.

Q. Now I show you book 2045 and ask you what that is? A. James Crump pass book No. 2045, Special Department, Roseville Trust Company, in the name of James Crump.

Q. Is that labeled in your handwriting? A. No, sir.

Q. Do you recognize the handwriting on the inside? A. Yes, sir; it is Mr. Jenning's handwriting.

Q. Now on January 5, 1912, do you find that a deposit was made? A. Yes, sir.

Q. How much? A. $5800.

Q. That money was actually deposited? A. It was actually deposited by Mr. Crump, yes.

Q. Now will you turn to Mr. Crump's account in the individual demand ledger and state whether a deposit is recorded there on that date for that amount or any other amount on that date? A. You mean, the special ledger?

Q. Special ledger? A. No, there is not.

Mr. Hinds: I offer this in evidence.

Marked Exhibit C-168.

Q. Now I show you pass book No. 2274, and ask you if you can identify that? A. Yes, sir.

Q. What is that? A. Pass book No. 2274, Roseville Trust Company, Special Department, in the name of New Jersey Adamant Mannufacturing Company.

Q. What deposits do you find there? A. Deposit on the twentieth of February, 1912, of $5,000.

Q. Was that money actually deposited? A. Yes, sir.

Q. Now turn to the corresponding account in the special ledger and state do you find such an account in the special ledger? A. No, sir, no such account in the ledger.

Q. Can you state whether any such account was ever entered in the special ledger? A. I don't think there was.

Q. But the depositor deposited the $5,000 on that date, did he? A. Yes, sir.

Mr. Hinds: I offer the pass book in evidence.

Marked Exhibit C-169.

Q. I show you a pass book, can you identify that? A. Benjamin F. Hughes, No. 2287, Special Department, Roseville Trust Company in the name of Benjamin F. Hughes.

Q. Did Mr. Hughes deposit $1,000 on March 1, 1912? A. According to this book, yes, sir.

Q. And what was the fact? A. I believe he did as far as I know.

Q. Now I show you a deposit ticket and ask you if you can identify that? A. Yes, sir.

Q. Is that your handwriting? A. It is.

Q. What is the amount? A. One dollar.

Q. And the date? A. March first, 1912.

Q. Turn to his account in the special ledger; do you find a deposit on March 1, 1912? A. One dollar.

Q. Any other deposit in that acccount? A. Interest, that is all.

Q. No other deposit? A. No, sir.

Mr. Hinds: I offer in evidence the pass book and the deposit slip.

Marked Exhibits C-170 and C-171.

Q. Will you turn to the special ledger account of Joseph Hevey, No. 2305; what deposit do you find recorded there on March 8, 1912? A. $100.

Q. Is there any other deposit recorded in the special ledger? A. No, sir.

Q. I show you pass book No. 2305, can you identify that? A. Yes, sir, that is in the name of Reverend Joseph Hevey in trust for Dennis Hevey.

Q. Did the Reverend Hevey make a deposit on March 8, 1912? A. March 7, 1912, according to this book.

Q. How much? A. $1,279.00.

Q. I show you a deposit ticket; is that in your handwriting? A. Yes, sir.

Q. The same date? A. Yes, sir.

Q. And the amount $100? A. $100.

Mr. Hinds: I offer in evidence this pass book and the deposit ticket.

Marked Exhibits C-172 and C-173.

By Mr. Stiefel: Q. Is the book in your handwriting? A. Yes.

By Mr. Stiefel: Q. All the entries? A. All except the interest and the withdrawal, the balance there.

Q. Can you identify this pass book No. 1928? A. Yes, sir, Catherine Haney, 1928.

Q. Did she make a deposit of $9,000 on August 23, 1911? A. I don't see any here recorded---oh, yes, $9,284.78.

Q. Turn to her account in the special ledger, 1928; is such a deposit recorded on that date in the ledger, August 23, 1911? A. Ledger page taken out.

Q. Do you find the page now? A. Yes, sir.

Q. Is there a deposit recorded on that date, August 23, 1912? A. August 23, 1912, I don't see any, no, sir.

Q. Of any amount? A. No, sir. $284.78 on the twenty-third, yes.

Q. Can you tell us what became of the difference between the deposit and the deposit as recorded in the general ledger; namely, $9,000? A. No, I couldn't tell you the exact use of it, it was used in the institution for something else, I don't know just what it was.

Q. It did not go to the account of Catherine Hand? A. No, sir, it did not.

Mr. Hinds: I offer this in evidence.

Marked Exhibit C-174.

Q. I show you No. 1383, pass book; what is that? A. I identify the book, it is No. 1383.

Q. And the name? A. I cannot read it.

Q. Margaret E. Wole? A. Or J. M. Wole, yes.

Q. Do you find that that depositor on August 15, 1912, made a deposit of $500? A. 8/15, $500, yes.

Q. Is that in your handwriting? A. Yes.

Q. The depositor actually deposited that monty? A. I judge so from the book; I don't remember it.

Q. Turn to that account in the special ledger, No. 1383? A. I have it.

Q. Do you find that on August 15, 1912, a deposit of $500 is recorded? A. No, sir.

Q. Or any other amount on that date? A. I do not.

Q. Can you tell us what became of that money? A. No, sir, I do not remember that at all.

Mr. Hinds: I offer the pass book in evidence.

Marked Exhibit C-175.

Q. What is this pass book which I now show you? A. No. 2685, Special Department, Roseville Trust Company.

Q. Of what name? A. Peter Scola.

Q. On September 16, 1912, did that depositor deposit $2,000? A. Yes, sir, according to the book he did.

Q. And in whose handwriting is the entry? A. It is in my handwriting.

Mr. Hinds: I offer this pass book in evidence.

Marked Exhibit C-176.

Q. Turn to the account in the special ledger, do you find a deposit recorded on September 16, 1912, in that account of $3,000 or any other amount? A. 2685; it is $2,000, is it not?

Q. Yes, $2,000. A. I find no entry here at all.

Q. Can you tell us whether the money deposited got into the depositor's account? A. I cannot, no.

Q. What is this pass book No. 2610? A. E. J. Brooks, No. 2610, Special Department.

Q. Do you find any deposits recorded there? A. There are three deposits entered here on this book.

Q. What dates? A. 1912, August 2d, $1,000. August 29, $1,000. 8/7 $1,000; I suppose that is the next year probably.

Q. Were those sums actually deposited by Mr. Brooks? A. Yes, sir.

Q. Will you turn to his account in the special ledger?

Mr. Hinds: I offer that pass book in evidence.

Marked Exhibit C-177.

A. I have it.

Q. Do you find recorded in the special ledger a deposit of $1,000 on August 2, 1912? A. August 13, 1912, $1,000.

Q. How many deposits do you find there? A. One of $1,000.

Q. Can you tell us what became of the other $2,000, whether it got into the account of E. J. Brooks or not? A. It never got into that account, no, sir.

Q. Turn to the special department ledger account No. 114, of Alma and Harvey Mott. A. I have it.

Q. Do you find a withdrawal on October 14, 1911, of $6,500 recorded in the ledger? A. Yes, sir.

Q. I now show you a draft of October 14, 1911, $6,500, purporting to bear the signature of Alma M. Mott, and ask you who signed that? A. I signed that.

Q. Did she withdraw the money at that time? A. No, she did not.

Q. I show you her pass book No. 114; can you dentfy that as her pass book? A. Yes, sir.

Q. Do you find any entry on that date of any such sum being withdrawn by her, October 14, 1911? A. I find none for that amount.

Mr. Hinds: I offer in evidence the pass book and the alleged draft.

Marked Exhibits C-178 and C-179.

Mr. Hinds: That concludes the list of the special department irregularities which is claimed in the bill.

I offer in eidence, the special ledger which was not marked.

Marked Exhibit C-180.

Recess.

Vol. II

Raymond E. Smith—Direct

Q. I show you a book and ask you what that is? A. That is pass book of the Roseville Trust Company, account with Catherine Haney.

Q. That is her demand account? A. That is her check account, yes, sir.

Q. Tell me whether on August 27, 1912 Catherine Haney deposited $10,396.46? A. On her pass book there appears an amount of that kind on that date.

Q. Did she deposit the money? A. Yes, sir.

Q. Is the entry in your hand writing? A. It is.

Q. Now turn to her account in the individual demand ledger.

Judge Collins: What is the date?

Q. It appears to be the 29th in the pass book, that must be the date; do you find any such deposit recorded in her account in the individual demand ledger on that date? A. No, sir, I do not.

Q. Or any amount? A. No, sir.

Q. Did that money go into her account in the Trust Company? A. Not on that day, no, sir; there were some credits to the account later on, I think one of $1,000; I don't know of any others that went to her credit.

Q. That did not represent actual deposits you mean? A. Yes, that did not appear on her pass book.

Q. Now look in her pass book and tell me

whether on September fourth of that year she made a deposit of $9,000? A. Yes, there is a nine thousand dollar deposit here on the fourth of September.

Q. Does that appear to be recorded in her ledger account? A. I don't see any entry of any such amount on that date.

Q. Can you say from looking at the entry in your hand writing in the pass book whether she actually made that deposit? A. She made such a deposit, yes.

Mr. Hinds: I offer this pass book in evidence.

Marked Exhibit C-181.

Q. What is this pass book I now show you? A. That is a pass book of the Roseville Trust Company in the name of Helen Esther Marsh or Chauncey H. Marsh, a check account.

Q. Look on May 9, 1912 and see if you find a deposit recorded in the pass book? A. Yes, sir.

Q. How much? A. There is one here of $9,-704.60.

Q. Did the depositor deposit that sum on that date? A. What year?

Q. 1912; not in the ledger, but did they actually deposit that money? A. Yes.

Q. The entry is in your handwriting? A. Yes.

Q. Look and see whether that appears in there, individual demand ledger account, May 9, 1912? A. No, sir.

Judge Collins: What is the number of that book, that pass book?

Q. No number, it is a demand account. Now look in the pass book and tell me whether those

depositors actually deposited the sum of $4,000 on September 16, 1912? A. Yes, in the pass book there appears a deposit of $4,000.

Q. Is that in your handwriting? A. Yes, sir.

Q. Does that indicate to you that the deposit was actually made by them? A. It does, yes.

Q. Look in the individual demand ledger and tell me whether on that date, September 16, 1912, you find recorded such deposit or any other deposit? A. No, sir, I see none of that amount.

Q. Do you find any deposit on that date? A. No, not on the sixteenth.

Mr. Hinds: I offer this in evidence.

Marked Exhibit C-182.

By Mr. Stiefel: Q. When you say these certain amounts were deposited in money that does not necessarily mean in currency or bills; it may mean through the agency of checks or drafts? A. Very apt to be checks, yes, sir, or a check.

Q. Now is this book, this demand ledger concerning which you have been testifying a book that was regularly in use in the Roseville Trust Company? A. Yes, sir.

Mr. Hinds: I offer that ledger in evidence.

Marked Exhibit C-183.

Mr. Hinds: It is one of the individual demand ledgers and appears to run from F to M.

Q. What is this book which I show you? A. This is a pass book of the Roseville Trust Company in the name of Peter Scola, check account.

Q. On September 16, 1912 did that depositor actually deposit $3,000 in the Roseville Trust Company? A. There is an entry here of $3,000 and it is crossed off.

Q. Is it in your hand writing? A. Yes, sir.

Q. What does that indicate to you as to whether or not such deposit was made? A. Why there was a deposit made of $3,000 on the 16th of September, 1912.

Q. Look and see whether that figure which you say appears to be crossed off is one which is needed to figure in the balance below? A. It is, yes.

Q. Then are you able to say that such sum was deposited by the depositor? A. Yes, sir, it was I think.

Q. Now will you see if you can find the account in the individual demand ledger. Do you find such an account? Before continuing your search for the account I will ask you whether there appears to have been any other deposit made in that account than the one $3,000 which you have just testified to? A. Only interest, that is all, $8.00.

Q. Well, now, can you after refreshing your recollection of a search of the ledger containing the letter "S," can you tell me whether or not such account was ever opened in the individual demand ledger? A. I cannot from recollection, no, I cannot find such an account on the ledger.

Q. Now I ask you respecting the ledger which you have before you whether at the time the institution closed it contained all the pages which it contained on the date of that deposit, September 16, 1912, except such pages as were put into the binder ledger, the accounts having been closed? A. So far as I know all the pages were in the book with the exception perhaps of accounts which had a great many pages and it was

necessary to take them out and put them in the binder.

Q. Was this one of the accounts which if it had existed would have had a great many pages? A. No, I believe not.

Q. Do you recall any of the facts of that transaction? A. I recall Scola having opened two accounts in the Roseville Trust Company, one as special and one a check account.

Q. Special is the one concerning which you testified this morning, is it not? A. Yes, sir; and I think altogether they amounted to $5,000; and I also remember that Scola drew a great many checks, or quite a few checks, and they were honored.

Q. I show you Exhibit C-28, individual credits M to Z, July 12 to August, 1913, and ask you to turn to the date of that deposit, September 16, 1912, and tell me whether you find any entry there indicating a deposit of that sum by that depositor? A. No, I find no such entry.

Q. Now in view of what you have been shown can you say whether or not that sum got into the account of the depositor Peter Scola? A. To the best of my recollection it didn't get into the account but he had the benefit of the money, most of it anyhow.

Q. At that time? A. No, not at that time but later on.

Mr. Hinds: I offer that pass book in evidence.

Marked Exhibit C-184.

Q. Now in several instances you have spoken of the depositor getting the benefit later of deposits which he made but which did not get on

to the bank's books at the time; how were the checks charged when later honored in such instances? A. They were held usually in the cash, in the paying teller's cash.

Q. And I understand you to mean that they were not charged in the books? A. They were not charged against the account in the ledger, no.

Q. Now can you give me the names of any other accounts where checks were paid but not charged? A. William C. Armstrong, Home Ice & Products Company, Intercity Land & Securities Company, Miele & Bruno.

Q. Were those two separate accounts or one account? A. Miele & Bruno was a firm account.

Q. How was the fact as to the account of Miele separately, were there any checks paid but not charged in that account? A. There were three accounts in the bank I believe, one with Frank Bruno, one with Miele & Bruno and one with Antonio Miele, and I think in all three, there were checks that were paid that were never charged against the accounts.

Q. I show you page 62 of the bill of complaint and ask whether any of the other accounts in addition to what you have spoken of contained on that page were accounts in which checks were paid but not charged? A. Yes, sir; James J. Fusco, H. A. Bellows, F. W. Holbrook, John B. Scarlett, F. Bruno Company, L. B. Haag and J. R. Clair.

Q. Why were those checks not charged? A. Because there were not sufficient funds on the ledger to charge them against.

Q. And what became of the checks immediate-

ly after they had been paid? A. They were carried in the cash.

Q. By whom? A. By either the receiving or paying teller, and then finally by the paying teller.

Q. After they left the cage of the paying teller what became of them? A. They were either charged against the accounts or something substituted for them and the checks themselves put in box 55.

Q. What was box 55? A. Safe deposit box in the safe of the Trust Company.

Q. That is to say all that were not charged were placed in box 55? A. Most all of them I think.

Q. Now can you state from your recollection the names and aggregate amounts of all the checks that were thus put into box 55 uncharged? I assume you cannot. A. I cannot tell the amounts of the individual accounts represented in those checks.

Q. Now after the institution was closed you were for a time employed in connection, or rather you were occupied in connection with winding up its affairs, were you not, under the Banking Department? A. Very little.

Q. During the time that you were did you look at the contents of box 55? A. No.

Q. Did you examine the items of uncharged checks which you had kept in box 55? A. No, sir.

Q. Well, now, I show you a paper and ask you whether that is in your hand writing? A. Yes, sir.

Q. Now refreshing your recollection from

that can you tell me whether you examined those items and prepared a list of their aggregates? A. As I remember it I didn't see the vouchers themselves; I got this from a list that was made up by the examiners; I wasn't allowed to see a voucher or a book when I went back there to work.

Q. Now I show you a document bearing the seal of a Notary, and purporting to be signed by a bank examiner, and ask you whether you recognize that as the list to which you have just referred from which you made the selections on the paper in your hand writing? A. Why, this, as I remember it, is the list that I used to prepare my list from.

Mr. Hinds: Now then, may this be marked for identication so as to refer to it later.

Marked C-185 for identification.

Q. Did you select from the list, identification C-185, the items representing checks which had been found in box 55 which had been paid but not charged?

Mr. German: I object. Why don't he ask him what this paper represents that he holds in his hand, what it is. Let him tell what it is; he is asking him if he did so and so and so and so.

The Court: You can ask him what that paper is.

Q. What is that paper? A. That is a list of checks that were found in box 55, according to another list, which checks had been paid by the Roseville Trust Company and not regularly charged against the accounts represented by those accounts.

Q. Now will you refresh your recollection from that list and tell us the aggregates of those checks paid but not charged, in the instance of each of the accounts?

Mr. Fairlie: I object to that because it appears that the paper which witness holds in his hand was not compiled by him from the items themselves but merely from the statement which some other witness had given him of items which this witness had not seen.

The Court: This evidence will not go for anything unless they can show that the list to which his attention has been directed was the list prepared by the Examiner and made up from the contents of box No. 55; he will have to prove that.

A. Shall I read it, your Honor?

By the Court: Q. Yes. A. The list I made up is as follows: William C. Armstrong, $36,647.58. H. A. Bellows—

By Mr. Clark: Q. And the number of items? A. It is all in the total.

By Mr. Clark: Q. Does it state there the number of items? A. No, sir, it is not stated on this list. H. A. Bellows, $2,782.65. J. R. Clair, $400.67; E. D. Dunn, $4,278.60; P. J Clossick, $18.35; J. J. Fusco, $2,148.27; F. W. Holbrook, $1,095.00; Home Ice & Produce Company, $12,835.67; Intercity Land & Securities Company, $26,649.48; Interstate Realty Stamp Company, $167.14; H. E. Marsh, $599.45; Miele & Bruno, $29,709.12; J. H. Lindsay, $4.50; W. C. Paul, $15.00; W. S. Moffitt, $85; John B. Scarlett, $13,-

292.63; Carrie Slavin, $15.36; C. P. Whitman, $415; Williams & Magnani, $376.01; Catherine Haney, $408.00; A. R. Jennings, $10; D. Michelson, $1.90; E. C. Howell, $33.25.

Q. Now I show you a large number of checks and ask you after four o'clock, if his Honor will approve my request, that you examine each and every one of thise checks, so as to be prepared to tell us tomorrow whether or not those checks were drawn by the makers whose names appear thereon and were paid by the Roseville Trust Company?

Discussion of Court and Counsel.

Q. Now Mr. Smith, were any such checks placed by you in your desk and were found there when the institution closed? A. I believe there were a few there, yes, sir.

Q. Were there any of those concerning which you have testified from the list which was found in your desk? A. I think not.

Q. Do you recall any instances where notes were discounted or bills purchased which were not charged in the company's books and not entered in the books? A. Not offhand, no, not without refreshing my recollection a bit, or my memory.

Q. I show you three sheets appearing to be in your hand writing; they are in your handwriting, are they not? A. Yes, sir, they are.

Q. Refreshing your recollection from these sheets can you give us any instances of the company's customers whose notes were discounted with the company's funds, but which notes were not entered on the company's books? A. In looking this sheet over I notice a great many that

did appear on the books of the company on this list.

Q. Well, can you select any from the list which were not entered? A. Your Honor, as I remember it, this was a statement made up by myself from a list of notes that were found in box 55; the other list I had was a list of checks; this is a list of notes.

By the Court: Q. Now what were the characteristics of the notes that you have put on this last list? A. I should have qualified that by saying, found in the desk as well, the box 55 and the desk.

By the Court: What were the characteristics by which you were guided in making up that list? A. I went entirely by memory, as I remember it now, in making up this list.

By the Court: Q. What did you try to put on that list? A. I tried to put on this list all the moneys represented, all the amounts represented in these notes that were due the Roseville Trust Company.

By the Court: Q. At the time of its failure? A. Yes, sir, and that were not in the regular files of the bills purchased.

By Judge Collins: Q. Is that paper you now hold in your hand the same one you had a minute or two ago? I thought it had more pages to it. A. There are three pages to this.

By Judge Collins: Q. That is the same paper you had a minute ago? A. Yes.

By Judge Collins: Q. Didn't you say that on that paper appeared notes that did go through the company's books? A. Yes, sir, I said that; and I just said to your Honor that I tried to pick

out and put on this list all the notes that were not regularly filed with our bills purchased that were still owing the Roseville Trust Company.

By Judge Collins: Q. But some of them on the list did go on the books? A. They went through regularly, some of them, most of them in fact I think, but they had been taken out of the files and not included in our regular bills purchased.

The Court: I do not understand exactly what the witness means.

Jude Collins: I think Mr. Smith means to refer to the place where these notes were kept, that they were kept in box 55 or in his desk instead of in the regular bills purchased of the bank.

The Court: No, he says that the transaction, as I understand him, was irregular. That is what he says.

By Judge Collins: Q. Did you say that? A. If I remember rightly I didn't say that the transaction was irregular, but they were not filed regularly with our bills purchased; they had been taken out of the bills purchased, because of the character of the notes, as much as anything, and something else substituted for them or an entry made for them, but they were still held.

By the Court: Q. Why were they put in the books? A. Because they were not included in our regular bills purchased account as carried on the general ledger.

By the Court: Q. Why not? A. They had been taken out of our bills purchased because some of them were considered that they were not worth their full value, and some of them were past due.

By the Court: Q. Go on, have you anything to add? A. And there were some that were not put on the books in the regular way, that is, that were not entered as regular bills purchased and did not get before the committee.

By the Court: Q. Well, do I understand they all had some defect about them? A. Well, defect—some of them were past due.

By the Court: Q. Well, that was a defect? A. Others were of questionable value so far as the face value was concerned.

By the Court: Q. And the others? A. I think all of them had something, there was something pertaining to most all of them, in fact all of whom I guess were irregular so far as value is concerned.

Judge Collins: I do not understand the witness to mean, when he speaks of some that were past due, that they were past due when they were taken; that they had become past due when they were taken out of the bills purchased.

The Court: Past due and unpaid.

Judge Collins: Yes, but not that they took over due paper. Now many of those he says did not get before the executive committee at all and others did. The difficulty I have in my mind, and have no desire to obstruct at all in this inquiry, but the difficulty is that there are blended together there various notes, and I couldn't get a clear conception of what counsel was after.

The Court: I would like to know whether or not all of these notes appear-

ing on this paper remained unpaid at the time when the institution closed?

A. I couldn't say that, I am not in position to know.

The Court: Well, I think the better plan will be for counsel to go on and prove his case.

Judge Collins: Well, I object to the pending question.

The Court: This list standing alone cannot be used for any purpose.

Judge Collins: That is the way I understand it.

Q. Now Mr. Smith, I ask you whether any of those notes at the close of the institution appeared upon the books of the Roseville Trust Company as assets of the institution? A. Not specified assets, no.

Q. I ask you also respecting those notes whether to the best of your knowledge at the time you made up that list they were notes which were still owing to the institution though not appearing among its assets? A. Yes, I have looked over the list just now, and I think most of them were owing to the Roseville Trust Company.

Q. When did you make up that list, was that after the bank closed or before it closed? A. After the bank closed.

Q. Now you have said in answer to Judge Collins question that as to many of those notes they had appeared upon the books of the Trust Company. In view of your later answer I understood you to mean—and correct me if I am wrong—that while they had originally appeared on the books of the Trust Company they had been physically

taken from the files of the Trust Company and entries had been made so that they no longer appeared upon the books of the Trust Company and included among the company's assets; am I correct? A. Yes, sir.

Q. Will you refresh your recollection from that list and tell us the aggregates of such notes found in box 55 or in your desk in the instances of each of the makers?

Judge Collins: I object to that as irrelevant and incompetent. Did you make this up from the notes or from the list that somebody else furnished you?

A. From the list, as I remember it.

Mr. Hinds: Now if your Honor please, the question will involve the witness reading from this list, but in view of our offer to summarize the proof, if there is no objection from counsel I will offer this list in evidence for what it is worth.

Judge Collins: I object.

The Court: No, it is not worth anything, I will overrule it.

Q. Now with respect to the checks of William C. Armstrong which were paid and not charged; during what period in general did that practice occur? A. I should say it extended over a period of two years prior to the closing of the bank.

Q. And about how frequently did it occur? A. Well, I should say within the last year it occurred almost every day.

Q. And as to the Intercity Land & Securities Company checks, during what period were those paid and not charged? A. I should say within the last six months of the bank's existence.

Q. And about how frequently? A. Why toward the summer of 1913, and from that time on their checks came in very frequently, I should say daily.

Q. Now will you tell us more in detail what you know of this process which you have referred to of leaving these uncharged checks in the teller's cash, and then later taking them out of the cash, will you tell us the method that was employed and the bookkeeping system that was employed in that process? A. The checks would come in themselves of course through the exchanges in most cases to the receiving teller, and the checks that weren't good would be rejected by the bookkeeper and turned back to the receiving teller, and they formed part of his proof of the exchanges; every day we had to prove the exchanges, and after the proof was made of the exchanges they would form part of the receiving teller's cash. It was a question of either paying the check, I mean honoring the check, or returning it to the bank we got it from, and checks of Armstrong and Intercity and others instead of being returned were honored and kept in the cash.

By the Court: Q. You were here when the bookkeeper was testifying? A. I was, your Honor.

By the Court: Q. Well, he showed various items in red ink on the column of balances which he said indicated that the account had been overdrawn. Now was there any rule observed about that? You are testifying to cases in which checks were presented, over-drafts were presented and paid, and were being dealt with in the way

that you are now describing. How do you distinguish that series of cases from the other series of cases in which checks were simply honored and passed on in the regular way and appeared in the regular balances in red ink? A. The cases are similar in a way, and yet they are not; they both consititute over-drafts; one overdraft shows on the ledger and the other does not. If, for instance, the checks of William C. Armstrong and others had been charged against their respective accounts on the individual ledger as they came in, instead of twenty nine thousand dollars worth of checks being in box 55 of William C. Armstrong, if they had been charged against his account on the ledger it would naturally show in red ink twenty nine thousand odd dollars, and of course that condition of affairs could not exist without coming to the light of someone, to the knowledge of someone, examiners or somebody.

By the Court: Q. Then what was the distinction that you observed; you directed the entire course, now what were the directions you gave with regard to that? A. I asked that the checks be held in the cash.

By the Court: Q. What checks? A. The checks that weren't good, such as William C. Armstrong and others.

By the Court: Q. Yes, but how about the others. What direction did you give with regard to those which were honored and put in the books? A. Well, I don't remember any specific case of overdraft showing on the ledger; of course in all institutions there are overdrafts, there are bound to be, sometimes just through

a mistake in bookkeeping, and it is an acknowledged fact that every institution in the country has overdrafts at times. The statements we got from the Banking Department and from the Department at Washington for National banks came printed in form, with overdrafts as one of the items on that statement.

By the Court: Q. Well, then do I understand that the question was one of amount, if the overdraft was small you allowed that to go through and appear on the books, and if the overdraft was considerable you retained the check or note or whatever it was in your box; was that the theory on which you proceeded? A. In a way it was, your Honor, and I should say that was the theory, yes, sir, except in other cases where overdrafts showed in large amounts on the ledger, those I usually knew of and usually knew that they would be made good by a deposit that hadn't yet arrived, or through a loan or credit of some kind.

By the Court: Q. Did you give any instructions to the teller in reference to the matter of putting them or not putting them in, or letting them pass through in the regular way? A. Well, I usually instructed him.

By the Court: Q. Well, what were the instructions? A. Whether to charge up a check or not, and show the overdraft.

By the Court: Q. Whenever there was an overdraft he would come to you and ask you? A. In most cases; some times the overdraft would be made after, it wouldn't be noticed until after it had been made and then my attention was drawn to it and I would say leave it as

it is in most cases where I thought it would be made good.

Q. In connection with his Honor's question, it has been shown this morning that the account of Frank Bruno was frequently overdrawn to the extent of a thousand dollars or over; can you say whether or not those overdrafts resulted from payments which were expressly instructed by you or whether those were inadvertences or mistakes of the subordinates of the bank, or can you tell us how else they occurred? A. I think in most cases on that account they were—overdrafts were allowed, that is, it was spoken of to me by the bookkeeper, and I told him to pay the check and show the overdraft.

Q. Now you have said that sometimes you permitted overdrafts to appear on the books in anticipation of a deposit or credit which you expected would be made; did it ever occur that you later had caused a fictitious credit to appear on the books so as to correct the apparent condition of overdraft? A. Yes, that has occurred.

Q. Now to continue your description of the process by which these uncharged checks would be held in the cash and then taken out of the cash, first I want to ask you whether at the time these checks were held in the cash the only discrepancy or irregularity in the books of the institution was the fact that there was a paper known as an uncharged check physically in the cash, except actual cash, is that true, at the time they were held in the cash up to that point? A. The only irregularity about that was the fact that our cash items were of such a large amount.

Q. Now when the checks were taken out of the

cash can you tell me by what bookkeeping process that was represented or carried out? A. When the checks were taken out of the—

Q. Paying teller's cash; those that were not subsequently charged I am now referring to. A. They were usually charged to some other account, either individual or general ledger account.

Q. Do you mean regularly or fictitiously? A. Fictitiously.

Q. Will you explain how that was done; use the names of Jones and Smith, if you please. Suppose Mr. Jones's check has been paid and has not been charged to his account and is in the paying teller's cash, and you are about to take it out of the paying teller's cash, and that there is another account there of, we will say, Mr. Smith, or some other account; tell us exactly what the process was of bookkeeping by which that check got out of the cash? A. Why it would be a question of charging the man that was good and taking out the check and putting it away temporarily until the check was made good and then reimbursing the account that I charged.

Q. It is a fact, is it not, that as to most of these Armstrong and Intercity checks that were never charged were never made good, isn't that a fact? A. Yes.

Q. What was the method in cases of those checks? A. The same method was used.

By the Court: Q. Well, you had to account in some way or other for that cash. In the exchanges, as I understand, the check came first to the receiving teller, and the receiving teller says

that he kept it for a day and handed it over to the paying teller; the paying teller says that he kept that check in his cash and treated it as cash. Now when you took that check out of the cash you had in some way or other to make good the cash I suppose, you had to make it good, apparently; now how was the cash made good when the check was taken out of the cash. That is what counsel wants to know. I do not quite understand that. A. Your Honor, I just answered that question in this way, that it was charged to another account that was good on the ledger; for instance, I can illustrate it, if Jones has a check in the drawer of one hundred dollars that is being held that is no good, I can charge it to Brown or Smith, that is, could temporarily, and it takes it out of the cash.

By the Court: Q. But it diminishes his account? A. Yes, sir.

By the Court: Q. Well, now, was that charge against Smith made temporarily put upon the books? A. Yes, sir.

By the Court: Q. In the regular account? A. It was, yes, sir.

By the Court: Q. Then according to the books Smith for the time being wouldn't have as much money in the bank as he ought to have had? A. No, sir.

Q. Now this hypothetical Mr. Smith whose good account you would deplete by a false charge against him so as to enable you to take a bad check of Mr. Jones out of the cash, that hypothetical Mr. Smith was in most instances one of the depository banks of the institution, wasn't it? A. Yes, sir.

Q. Will you give us the names of the depository banks whose accounts were for the most part charged fictitiously on the occasion of taking those bad checks out of the cash? A. Union National Bank of Newark, Irving National Bank of New York.

Q. Explain to us, taking instead of a hypothetical Mr. Smith explain how it was done in the case of the Union National Bank and, we will say, a check of Mr. Armstrong? A. It wasn't usually one check, it was perhaps a hundred and fifty or two hundred checks.

Q. Explain how you did it. A. Often times there were checks of William C. Armstrong and others that came in that I never saw until after they had been honored.

By the Court: Q. Well, they got into the paying teller's box as cash? A. Yes, sir.

By the Court: Q. What did you do with them then? A. When they accumulated to a large amount and I felt that I couldn't afford to have them carried along as cash items, for the same reason as I explained about the overdrafts on the ledger, that I would charge them to one of these banks in full.

By the Court: Q. The effect of that would be that the bank would still have the money. Did the bank still have the money, or would the money be actually taken for the time being out of the bank's account? A. It would be.

By the Court: Q. In other words, it would be a fictitious transaction so far as the bank was concerned, or would it be a real transaction by which the deposit made with them would be reduced to the amount of the checks? A. It would

be really a fictitious deposit, or charge as you might call it in this case, in either one of these banks, Union National or Irving National.

By the Court: Q. If anybody wrote to the bank for the purpose of finding out what the bank balance was the bank balance would be truly reported by that bank, and it would not include this transaction? A. That is true, yes, sir.

Q. Now I show you general ledger as of February, 1912, and I first ask you whether it is not a fact that after you had made a fictitious charge or entry respecting the account of a depository bank in connection with the withdrawal of a large number of these bad checks from the cash your general ledger would have shown the balance of that depository bank to have been larger than was actually the fact; is that the case? A. It would have shown a smaller balance.

Q. Yes, smaller. A. Yes, it would have been smaller than it really should.

The Court: It would seem to be smaller, but would in fact be the same.

Judge Collins: Yes, but the Roseville Trust Company's books would show it smaller than it was and not larger.

Mr. Clark: Will you explain that?

A. It would show a larger balance in the Roseville Trust Company than really existed in the Irving Bank. It is a question of bookkeeping. For instance, if the balance in the Union National Bank were $10,000, we will say, and we charged, or I charged off $5,000 worth of Armstrong checks to the Union National Bank, the balance on our books would be increased $5,000. It is

just the same as if I sent a deposit down to the Union National Bank, it is a charge against that account; our books show $15,000 balance and their books show $10,000. If an individual sends a deposit to the bank he charges that bank with $100 or $1,000, or whatever the amount of the deposit is, and each check he draws he credits that bank with it.

Q. Now Mr. Smith, did the accounts with the depository banks appear in any other book of the Trust Company than the general ledger? A. You mean the balances?

Q. Yes, the balances. A. No, sir. The daily balances you mean?

Q. Yes. A. From day to day?

Q. Yes, in the depository banks? A. Only in the general ledger, that is all.

Q. Didn't appear in any individual ledger or any other subsidiary book? A. No, sir.

Q. Can you recall about when you began to make falsely large balances of depository banks in the general ledger to cover up these abstractions of bad checks from the paying teller's cash? A. I should say in 1912 I think, I don't know just what time in the year.

By the Court: Q. I do not understand this. If your books showed that the depository bank had $5,000 more than it really had, why would not a comparison between your book and the report of the depository bank show the difference. In other words, a man looking at your general ledger account would find that on a particular day $15,000 were on deposit with the Union Bank; that man would go to the Union Bank and say on that day how much money had you on

deposit, and the Union Bank would give the true amount, $10,000; now why would not that be aparent to anybody who made the investigation? A. It would be, providing there was such a difference existed at the close of the month or at the time when a reconciliation of the accounts was made.

By the Court: Q. Then was the matter so arranged that that should never happen when the Examining Committee came to examine the books? A. Yes, sir, I tried to arrange it so.

By the Court: Q. That is the reason they did not discover it? A. Why, yes, yes, sir, that is from my recollection, I cannot tell unless I look at the books at certain dates.

Q. We are going to take up those three dates. First I will take, however, an early date, where the bank accounts were not in check, just as a typical instance. Look at the general ledger for April 29, 1912, the account of the Irving National Bank, New York City, and tell me what debits you find on that day to that account? A. $14,408.77.

Q. Now will you look in the general cash book of that day and tell me what debits actually occurred between your bank and the Irving National on that date? A. $4,228.77.

Q. Now will you subtract the true debit from the false debit. By the way, that false debit is in your hand writing, is it not? A. Yes, sir.

Q. Now will you subtract the true debit from the false debit and tell me what the amount of the difference is? A. Ten thousand one hundred eighty dollars.

Q. I call your attention to an interlined fig-

ure over the credits of that day $10,800, and I ask you whether that figure represents any actual credits? A. Yes, it does.

Q. Will you explain the appearance in the ledger of that interlined $10,800, if you can? A. That, as I see it, is simply an entry on that day's work; there has been a mistake in charging the wrong entry to the Irving National Bank and there has been a counter entry made to offset the difference on that day.

Q. Well, then, from your examination of those entries you would say that that does not indicate an instance where you falsely charged the Irving National Bank in order to take a number of cash items out of the cash? A. No, sir, I cannot see it that way. It was simply a credit to offset that.

Judge Collins: A mere correction.

Q. What books of the bank would enable you to say whether or not your explanation is a true one? A. Well, this is proof enough, this is the book that shows the account of the Irving National Bank, it is the only book we have that shows that account.

Q. Well, there were instances, were there not, where a false debit would appear on the general ledger to cover up the abstraction of bad checks from the paying teller's cash? A. Yes, sir, but this is not one.

By the Court: Q. Well, just look at this one? A. Well, that is an extra letter probably sent out that day that didn't get on the cash book when this ledger was posted, we found that we could transfer, for instance, from one bank to another, probably.

Q. Did it ever occur that the hypothetical Mr. Smith to whom you would charge the amount of a number of bad checks which you would take out of the paying teller's cash was not a depository bank and not an individual, but was the account known in the general ledger as individual deposits; did that ever occur? A. Yes, sir.

Q. Tell us how that was done? A. That was, as I remember it, charged to the individual accounts on the general ledger to take care of the bank balances that had been charged.

By the Court: Q. What was the function of the individual accounts? A. The individual account runs along here (indicating); the individual deposits No. 1 and No. 2 shows the balance, the aggregate balance on each ledger.

By the Court: Q. The aggregate of the deposits is shown on the individual ledger accounts? A. Yes, sir.

By the Court: Q. Individual deposit No. 1 is the main deposit, I suppose? A. No, sir, there are two of those, your Honor, they are both the check accounts, they are divided in two ledgers, at that time.

By the Court: Q. And the special deposits? A. Are the savings accounts.

Q. Immediately after you had made such false charge to the general ledger account of the individual deposits, is it a fact that the aggregate of the individual deposits as it appeared in the general ledger would be smaller than the actual balances footed up from the individual ledgers themselves? A. Why certainly, yes.

Q. Now I direct your attention to general ledger as of January 13, 1912, and the extensions

from the balances of January 12th, individual deposits, to the following day, January 13th, and ask whether you find those to contain such false charges to the individual deposits No. 2. Now you find the balance on January 12th to have been $205,028.50; is that correct? A. Yes, sir.

Q. And you find that there were debited on that day $5,133.93, and credited $15,140.05, or an excess of credits of approximately $10,000; is that correct? A. Yes, sir.

Q. Now what did you find on the 13th, $205,-034.62? A. Yes.

Q. Or practically the same amount? A. Yes.

Q. Is that an instance where you falsely charged $10,000 to the M to Z individual deposit ledger No. 2? A. I would have to compare my footings first to find out from the cash book.

Q. Well, there is obviously a misextension from one day's work to the next, is there not? A. I want to find out first if these footings are right.

Q. Well, as reported in the general ledger there is a misextension from one day to the other? A. It doesn't signify it was done purposely though.

Q. The date is January 12th to January 13, 1912 (showing witness book). A. Individual credits is what I want.

Q. Now what do you find, you have looked at the general cash book, haven't you? A. Yes, sir.

Q. Under date of January 13th? A. Under date of January 13th.

Q. And did you find that the charge— A. The credit was $15,000.

Q. Instead of what? A. As it shows on this

ledger; that is what I wanted to prove whether the footings were not right.

Q. What does that indicate to you as to whether or not there was a false charge made to the individual deposits on that day? A. There was no false charge made; there is an error in the extension of $10,000; the charge is all right, it is a charge of $5,000 just as it shows in the book.

Q. Though this was not an examination day, to illustrate I will ask you whether had a footing been made of the individual demand ledger No. 2 on that date the aggregate would have beer the reported aggregate as appears in the eneral ledger, two hundred and five thousand odd; can you say that, whether or not that would have been true? A. It would have been $215,000.

Q. Now then can you recall any earlier false entries in the general ledger than the one I have called your attention to, January 13th?

The Court: But he says this was not a false entry.

Q. He says it is a misextension.

Judge Collins: I object on the ground that he assumes it is a false entry, and he has explained it was not.

Q. I will ask was that a false entry? A. I don't know; it is a mistake in the extension, that is very apparent.

Q. Well, you have said that the amount there as representing the aggregate of individual deposits was not the true amount of that aggregate, you said that. A. That wouldn't make it a false entry, though.

Q. Do you know of any earlier instances than that where the amount as reported in the general

ledger was different from the true amount? A. No, sir.

Q. I will ask you about the depository bank matter which we suspended for a moment. Will you turn to the general ledger as of October 28, 1912 and look at the account of the Union National Bank; what do you find there; any evidence of a false charge? A. I don't find any evidence of a false charge, but there is a false extension, if you want to call it that.

Q. How large is the amount of the false extension? A. Twenty-seven thousand dollars.

Q. Now by false extension you mean that on the face of the ledger there appears to be an arithmetical error of $27,000 in carrying the work of one day forward to the next day; is that correct? A. Yes, sir.

Q. Can you say whether or not after the making of that false extension on October 28th the balance in the Union National Bank as it actually existed would be the same as the balance as it appeared in the general ledger? A. No, it would not.

Q. Now will you turn to January 31, 1912 and look at the individual deposit ledger No. 1, and tell me whether you find any indication of a false charge to the No. 1 demand ledger on that day and the extension? A. I cannot tell anything about a false charge, I don't see any false charge.

Q. Do you find any false extension from one day to the other? A. From the 31st to February 1st?

Q. From the 30th to the 31st. We have the cash book, if you want to refer to that. A. Yes, sir.

Q. Now what is the amount of the—

Mr. German: I object to the word "false" unless it is testified what is meant by the word "false." If it is carried over as an error I do not think it should be termed false.

The Court: I do not know whether it is intentional or unintentional until the witness tells us.

Mr. German: Counsel has put the word "false" into the witness's mouth, and before that time he said it wasn't false.

The Court: I think it would be better to let the witness state that.

Q. I will use the more expanded form of an entry which does not represent the true condition. A. On which account is this?

Q. No. 1, individual deposits? A. Yes, sir.

Q. What do you find? A. Difference of $30,000 in the extension.

Q. Now after making that entry and after making that misextension of $30,000—by the way, is that over extended or under extended from the previous day? A. Under extended.

Q. Supposing a footing had been made of the balance shown in the individual demand ledger No. 1 on that day, how would that aggregate have compared with the reported aggregate in the general ledger? A. Difference of $30,000, would have shown $30,000 more.

Q. Do you recall any instance of that character in the general ledger earlier than the dates you have referred to, one was January 13th. A. I do not.

Mr. Congleton: 1912?

Mr. Hinds: Yes.

Q. Now will you turn to April 11, 1912, the date of an examination by the examining committee?

Mr. Stiefel: Could I call your Honor's attention to one thing there, on January 30, 1912, the figures; you see, your Honor, those figures, and there is something written under them, or they don't look clean; you see those are the figures referred to by Mr. Smith. I just call your Honor's attention to that.

Mr. Hinds: I will have testimony on that.

The Court: Perhaps Mr. Smith can explain it.

Q. Your attention has been called to the fact that there appear to have been changes in certain of the figures in the general ledger work of January 31st, and I ask you whether the figures as they now appear are those which are needed to make up the footing at the bottom of the page. This is perhaps unimportant since it was not an examination date. A. Yes, sir, it was necessary in order to make the trial balance prove that day.

By the Court: Q. Can you explain why the erasures were made and the figures written over the erasures? A. I cannot, your Honor; that "3" doesn't look like mine at all, it probably is.

By the Court: Q. Can you say whether the erasures were made immediately after the original figures had been put there, or whether they were made some hours or days after? A. Your Honor, I cannot remember that at all.

Mr. Hinds: If your Honor please, in a few minutes, after some preliminary questions, I am about to ask certain critical questions and I would be obliged to your Honor if you would consider the case of Campbell vs. Watson, where there was argument and ruling by Vice-Chancellor Pitney on the precise questions I am going to ask, anticipating possible objections.

The Court: Well, ask the questions; I will have to hear argument and make my own ruling.

Q. Turning to April 11, 1912 when there was an examination by an examining committee. Now I will first ask you whether you made any changes in the figures as of April 11, 1912 in the general ledger after the committee had made their examination? A. I don't remember having done so at all.

Q. Was the general ledger at the time the bank closed, with respect to that date, in the same condition that it was when the committee made the examination, as far as you know?

Mr. Stiefel: I object, because the important question is not what the condition of the book was at the time the bank closed, but what the condition of the book was on that particular day.

Mr. Hinds: We will show that the book has not been changed since it was closed, and then it would be a matter of adding two and two together to show it was the same as when the examining committee made the examination.

Admitted.

A. Not to my knowledge, no.

Q. Now I will direct your attention to the credit item in the bills purchased account of April 12th, the day after the examination, $54,-420.08. I will withdraw that, and I ask you whether you will make a footing of the balances as of April 10, 1912 and compare them with the balances as they appear in the ledger, and the footing as it appears in the ledger. A. April tenth?

Q. Yes. A. The tenth seems to foot all right with the exception of ninety cents, but I guess I made a mistake in that—yes it seems to foot correctly as far as I can see.

Mr. Hinds: If your Honor please, our accountant has footed it and finds it $100,-000 out, but if your Honor desires to have him take the time to go over it now we can do so, or if you would rather have me go on to another feature.

The Court: No, let him finish this.

A. I see where my mistake is, yes, sir, there was $100,000 in the footing.

Q. What is the correct footing of the credit balance as of April 10th? A. The credit balance should foot up $969,467.48.

Q. And what is the balance as shown in the general ledger? A. $869,467.48.

Q. What is the balance of individual deposits M to Z on April 10, 1912? A. $250,760.84.

Q. Now will you make the subtraction between the credits and debits on the following day, April 11th, and the subtraction necessary to make the extension to the 11th, and tell me what you find? A. Fifty thousand dollars in the extension.

Q. That is to say, on April 11, 1912 there is an error of $50,000 in the extension from the previous day in the general ledger, individual deposits No. 2? A. Yes.

Q. Is that over extended or under extended? A. Under extended.

Q. Now will you compare the necessarily corresponding entries in the cash book as of that date and tell us what you find? A. April 11th?

Q. Yes. A. I find the entries in the ledger the same as in the cash book.

Q. Now what does that difference of $50,000 in the extension from the 10th to the 11th, as of the work of the 11th, indicate to you? A. An under extension of $50,000.

Q. You have found that the day's entries in the ledger in that account are the same in the aggregate as those in the cash book, haven't you? A. Yes, sir.

Q. And does or does not that indicate to you that everything entered in the ledger was entered in the cash book and vice versa? A. As far as these footings are concerned, yes, sir.

Q. Now will you look at April 11, 1912, to the account of bills purchased? A. Yes, sir, I have it.

Q. What do you find the condition to be there as regards the debits? A. $27,645.44.

Q. Now lock in the cash book on that date? A. Cash book is $7,645.44.

Q. A difference of $20,000? A. Yes, sir.

Q. So far as you know was this cash book at the time the bank closed in the same condition that it was on the date when the examining committee were there on April 11, 1912? A. The same condition.

Q. That is, no changes, as to whether any changes have been made since?

Judge Collins: You mean by that alteration in figures?

Mr. Hinds: Yes.

Judge Collins: Well, can he tell that?

Q. Look at it and tell me. I am now referring to the cash book? A. The cash book?

Q. Yes. Look at the cash book on April 11, 1912 and tell me whether that was in the same condition when the bank closed as it was on the day the committee were there, April 11, 1912? A. As far as I know.

Judge Collins: You mean as to the erasures, alterations in figures; is that what you mean?

Mr. Hinds: It is a matter of demonstration; there was no evidence of erasure here, and I am asking the witness whether he knows of any changes having been made, I mean any kind of changes, whether erasures or what. Do you find that all the figures in that day's work in the general ledger are your own, April 11, 1912?

A. Yes, sir.

Q. Did you make any of them after the committee had made its examination?

Judge Collins: Make any of what?

Q. Of the figures of the April 11th general ledger column? A. Not to my recollection, no, sir.

Q. I ask you whether the entries in the cash book on that date are in your hand writing? A. They are not.

Q. In whose handwriting are they? A. Mindnich's.

April 19, 1917.

RAYMOND E. SMITH, re-called:

Direct-examination by Mr. Hinds:

Q. I show you general ledger as of April 11, 1912 and direct your attention to the credit on that day in bills purchased $5,300. I now show you the cash book and ask you what you find was the credit to bills purchased on that day in the cash book? A. The credit on the cash book is $35,300.

Q. Now will you perform the operation of extending bills purchased from April 10th, balance of $502,725.65 with the debit on April 11th of $27,645.44 and the credit which you have just said is on the general ledger of $5,300, and tell me whether the correct extension from those figure appearing in the April 11th balance of $525,-071.09?

Mr. Stiefel: You said $5,300.

Mr. Hinds: Yes.

Mr. Stiefel: Or $3,500?

Mr. Hinds: No, $5,300, as appears on the general ledger.

Q. Is that a correct extension? A. This extension is correct, yes, as appears on the ledger, five hundred and twenty-five thousand.

Q. Had the credit on that day been $35,300 as it appears on the cash book the extension would not have been correct, is that right? A. If the credit had been $30,000 more?

Q. Yes. A. No, this extension would have been $30,000 less.

Q. Now suppose that both the debit on that

day and the credit had been as given in the cash book, then what would the difference have been in the balance on April 11th? A. Been a difference of $30,000.

Q. Well, there would have been $30,000 in the credit, would there not? A. Yes, sir.

Q. How much in the debit, do you recall from yesterday? A. I don't remember.

Q. I will show you the cash book showing the debits to bills purchased on the 11th. A. Seven thousand dollars.

By the Court: Q. One moment. The credits of bills purchased indicate purchases or sales? A. They indicate notes that are paid that day.

By the Court: Q. And the debits? A. Notes that are purchased.

Q. Now then you find that the debits or credits are $20,000 too high in the ledger; is that right? A. Yes, sir.

Q. And those that were paid are $30,000 too low in the ledger, is that right, on that day? A. Yes, sir.

Q. That is to say, had the ledger correctly stated the transactions appearing in the cash book there would have been a difference of $50,000? A. Yes, sir.

Q. And then the balance shown on April 11th would have been $50,000 out of the way; is that right? A. Would have been $50,000 less.

Q. Now, if your Honor please, to save the witness performing an operation of addition I will state and concede that this footing of April 11th is correct. Now assuming that to be correct—

The Court: Correct as the figures are there now.

Q. Yes, the footings are correct. Now Mr. Smith, assuming those footings to be correct, would they have been correct had the debits and credits to bills purchased on the day of the examination, April 11th, correctly been extended into the ledger?

Mr. Stiefel: I object, if your Honor please, because as far as that embraces a question of arithmetic it answers itself, and that is not the only factor in this case, there may be other changes here, and that footing might have been correct if these figures are correct, and other figures.

The Court: That is a matter of argument. There must be something on the notes in order that the Court may have its attention directed to the matter.

Q. Now you have testified that on April 10th, the footing of the credit column of the balances was $100,000 too small in the ledger as it now appears? A. In excess.

Q. In excess. Now what does that indicate to you as to the condition of the general ledger on that date, the condition of the bank's assets and and liabilities as shown by the general ledger? A. The bank's assets according to the ledger were $100,000 less than the liabilities.

Q. Did that condition in the bank continue to exist on the 11th? A. Yes, sir, I think so.

Q. Now you have referred to an incorrect extension of $50,000 from one of the deposit ledgers to the balance of April 11th, and you have just referred to a $50,000 error in the bills purchased account, and I ask you if the aggregate of those two items represents the $100,000 which contin-

ued to exist as a shortage or difference on April 11th, and as shown by an incorrect footing on the 10th? A. I think so, yes, sir.

Q. Now can you say from recollection and from an examination of that page of the ledger and from the other books that you have looked at in what accounts on April 11th the shortage was absorbed or appeared, on comparison with the actual items? A. Individual deposits No. 2 and bills purchased.

Q. Now can you say what, if any, of the balances on April 11th in the general ledger were incorrectly stated, that is, were not the correct balances as shown from the actual assets or liabilities themselves? A. I cannot tell, no, sir, not from memory.

Q. Have you any recollection or opinion, after looking at the books?

Mr. German: If your Honor please, is this proper?

The Court: I will strike out the word "opinion."

A. To the best of my recollection all the other accounts were intact except those two accounts at that time.

By Mr. Stiefel: Q. The individual deposits and bills purchased? A. Individual deposits No. 2 and bills purchased.

Q. That is to say, the balances on April 11th correctly showed all of the other accounts with the exception of bills purchased and individual deposits? A. No. 2, yes.

Q. Well, now, will you tell us your reason for making an incorrect extension in the individual deposit ledger No. 2 from the tenth through the

work of the 11th to the balance on the 11th, $50,000? A. Why to partially counteract the $100,000 that was in the footing the day before.

Q. Did you make that operation in the general ledger on the eleventh before or after you knew that the examining committee would arrive? A. I think it was before.

Q. Before you knew they would arrive? A. I think so—well, I don't say that, before I knew they would arrive—before I knew they would arrive, yes, sir.

Q. Well now, what time of the day did they get there, can you recall? A. I think at all times about three o'clock or a little after.

Q. What time did you perform the work in the general ledger as of that day? A. Well, it was at least half past three or four o'clock, we had to wait for all the figures before we could check off a trial balance.

Q. Then would you say that you had done the work for that day in the general ledger before or after they had arrived? A. After they arrived.

Q. Then did you make this mis-extension from the 10th to the 11th in deposit No. 2 ledger account in the general ledger before or after they arrived? A. After they arrived, yes.

Q. Can you tell us what your reason was in that operation?

The Court: He has stated that, has he not? It is not worth while to ask it again.

Q. Now I direct your attention to December 14, 1912. A. Did I say before I knew that the examining committee was coming or after?

By the Court: Q. I understood you to say after. A. After I knew, that is what I meant to say.

Mr. Stiefel: I think the answer was after they arrived.

Mr. Hinds: Well, it must have been after he knew they arrived.

The Court: You can cross-examine on that.

Mr. Stiefel: I would like to know now really what the answer is.

The Court: I think he has answered it sufficiently; you better wait until cross-examination.

Q. I direct your attention to the balance in the general ledger on December 13th, the day before the December 14th examination, of individual deposits No. 1. A. Yes, sir, I have it.

Q. And what do you find? A. An under extension of $100,000.

Q. To the 14th? A. On the business of the 13th.

Q. What is the balance shown?

Mr. Stiefel: The question and answer are not thoroughly intelligible to me.

Question and answer read.

Q. Now will you point to the different items and explain what you mean by that answer? A. I mean to state that there was an under extension of $100,000 in individual deposits No. 1 on the date of the thirteenth of December.

Q. That is to say, taking the debits on the 13th and the credits on the 13th and the balance on the 12th you would if performing it correctly get a result $100,000 different from the actual balance that appears on the 13th; is that correct? A. Yes, sir.

Q. Now will you perform the same operation

with respect to the business of the day of the examination, December 14th; I call your attention to the fact that the balance on the 13th was ninety-five thousand dollars odd, and that there are debits and credits on the 14th and a balance of one hundred and ninety-three thousand dollars odd on the 14th. Now what have you to say as to that extension? A. There is an over extension of $100,000.

The Court: When was the examination, what was the day of the examination?

Mr. Hinds: December 14th.

The Court: That was on what day?

Mr. Hinds: That was on a Saturday; 13th was Friday and the 14th was Saturday, and Monday was the sixteenth, with Sunday intervening.

Q. Now look at individual deposits No. 1.

The Court: One moment. There was first, as I understand it, an under extension, and then an over extension of $100,000. Now would not that bring the result right on Saturday?

A. That would by itself, yes, sir.

By the Court: Q. Well, what do you mean "by itself"? A. Taken alone it would, yes.

By the Court: Q. What qualification would you make? A. Well, your Honor, the over extension on the 14th of $100,000 would have to be offset by something on the other side, $100,000, probably in some other account.

By the Court: Q. Well, how was that arranged; look at the book and tell us? A. It is a question of going throngh all these extensions. Your Honor, it might be in the posting as well,

that is a fictitious debit in some of the bank accounts.

Q. By the Court: Q. I do not understand that. A. It would be necessary to have the cash book.

By the Court: Q. Well, look at the cash book; I want to understand it.

Mr. Hinds: There is the general cash book as of December 14th.

A. I cannot find anything here offhand, your Honor, without comparing the cash book all the way through with the ledger.

The Court: Well, then I understand the witness's testimony to be that as far as those two changes were concerned the books when they were inspected by the committee were right. Now I do not know whether there are other items that offset that, but that is the result of the evidence of his witness so far.

A. Your Honor, I think I have it now.

By the Court: Q. Explain it. A. There was an over extension in the demand loans of $100,000 on that date; on the 13th of December the demand loans, according to the ledger, were $51,438.00, and on the 14th without any charge or credit to that account they were extended as $151,438.00.

By the Court: Q. And that was wrong? A. Yes, sir, an over extension.

Q. I suppose you mean collateral loans? A. collateral loans, yes.

Q. Was there ever any such amount of collateral loans in the institution as $151,000, as far as you recall? A. I think not at any time.

By the Court: Q. By collateral loans you mean

loans secured by collateral held in the box in the Fidelity Company? A. No, sir, those were stocks and bonds owned by the company, but collateral loans were loans made directly on collateral from the borrower.

By the Court: Q. Where was the collateral kept? A. It was kept in the safe of the Roseville Trust Company.

By the Court: Q. It was a note secured by stock or something else? A. Yes, sir.

Q. What have you to say, if anything, from your own recollection as to the correctness of the figure $95,734, as the aggregate of individual deposits No. 1 on December 13th? A. My recollection is that they were $100,000 short.

Q. Now can you tell us why you performed a balance on the day of the examination? A. To mis-extension so as to bring those up to $193,000 make the account prove with the ledger.

Q. Now then can you say whether at the time the examining committee were there the extensions on December 14th, the work of the day, debits and credits, and the balance on the 13th and the balance on the 14th were as they are now given and now shown on the book before you? A. I cannot say positively but I think not.

Mr. Hinds: If your Honor please, we have found the footings on December 14th to be correct. Let that be accepted in lieu of the witness adding it up.

The Court: Well, your expert can testify to that.

Q. Assuming the footings as they are now shown on December 14th in the ledger—

The Court: Let me understand that. I under-

stand your answer to be that th ebooks as they are now were not in the condition in which they were when they were inspected by the examining committee; is that right? A. That is correct as to one account I think, your Honor, which account is the collateral loans.

Q. I will ask you whether the change which you say has been made since the committee examined was made since they were there the first time or since they came back later to make a footing?

Mr. Cornich: I object. There is no evidence that they came back to make a footing

Mr. Hinds: Yes, Mr. Benjamin, Mr. Cornish's own client, testified to that, and Mr. Sexton.

Mr. Cornish: I don't think there is any such evidence in the case at all, I have no recollection of it.

The Court: Let the witness state what his recollection about that is.

A. My recollection, your Honor, is that this was changed during the course of the examination, after the proof on the collateral loans had been made.

By the Court: Q. While the committee were there? A. Yes, sir.

By the Court: Q. In other words, as I understand it the committee examined the collateral, compared it with the figures in the general ledger and found that the aggregate of the collateral notes corresponded with the aggregate amount in the general ledger; after that had been done, for the purpose of making a balance you made this

change? A. I made that change, your Honor, in order to make the footings agree on each side.

By the Court: Q. And in the expectation of course that the footings would be examined by the committee or one of them? A. Yes, sir, that is the best of my recollection.

Q. Can you recall whether you observed the committee making a footing in the general ledger after the December 14th examination? A. I never remember having seen any member of the examining committee foot the ledger.

Q. Does that refer to any examination, all examinations, or just the December 14th examination? A. Refers to all examinations made by the examining committee, that is the best of my knowledge.

Q. Now I direct your attention to the balance on December 14th in the Orange National Bank of $7,345.21, and to the balance in that account on December 13th of $5,683.45; will you look at the debits and credits as of the 14th and state whether that is correctly extended; what do you find the correct extension to be? A. I find an over extension of two cents.

Q. Now look in the account of the Irving National Bank; what do you find the balance to be as shown now for December 13th? A. Looks like $25,000.

Q. On December 13th? A. There is 18 added on the 7, that is probably meant for $8,277.92 I think.

Q. Now look at the debits and credits on the 14th and tell me what balance you find would be properly extended to the 14th? A. From the 13th to the 14th?

Q. Look at the work of the 14th, the balance of the 13th, and see what balance you arrive at for the 14th? A. There appears to be a mistake of $1,000 in the extension.

Q. One thousand dollars? A. Which is under extended.

Q. What figure do you make that out to be in the balance of the Irving on December 13th? A. Eight thousand two hundred seventy-seven dollars, ninety-two cents.

Q. Tell us exactly what you see there. That is your hand writing, is it not, all of it? A. I wouldn't say that that mark was mine.

Q. Except for the diagonal mark is it all in your hand writing? A. Yes, sir.

Q. Tell us what the small top figure is as you read it? A. Eight thousand dollars, that is an 8.

Q. What about the figure to the left of the 8, what do you find that to be? A. It looks like a one, it has been crossed off, it appears to be a 9, 98,000.

Q. Now can you explain the purpose of putting that figure there? Was that figure there when the committee made their examination on the 14th, the following day?

Mr. Stiefel: You mean that figure 9?

Q. The figure 98. A. I couldn't tell you that.

Q Can you tell us what reason you would have had to put it there afterwards, if any, after they made their examination? A. I see no reason, no.

Q. Now assuming that to be 98 what have you to say as to the extension from that balance through the work of the 14th to the balance as shown on the 14th? A. Well, taking those figures as 98,000 and the balance underneath as $7,-277.92, make an under extension of $98,000.

Q. Now will you look at the small figure 2,000 above the credits and in the credit line on the 14th in the account of individual deposits No. 1, and look at your cash book and tell me whether that credit of 2,000 in that account is found in the cash book. I show you the credit book, and correct my question to refer to the credit book on that day. A. The footing appears to be here, $28,575.93.

Q. And that is the figure underneath the small 2,000? A. Yes, sir.

Q. Then can you say whether that $2,000 credit was actual or fictitious? A. I can't say whether it was fictitious or not.

Q. Can you tell by looking in any of the other books of the bank whether or not it was fictitious or whether it represented any actual credits? A. I don't find any on the general cash book at all of $2,000.

Q. Well now, taking in conjunction the $98,000 mis-extension in the Irving account in one way, and the $2,000 item you just referred to in the individual deposits account, can you explain their significance with respect to any other discrepancy in the work of December 14, 1912? A. Except that they together make $100,000.

Q. And that was the amount in which the collateral loans are over-stated as it now appears on December 14th? A. Yes, sir.

Q. Now will you look at the item of cash on December 14th, both the work of the day and the balance, and tell us first how you would go to work to confirm the correctness of those debits and credits on the 14th and the balance? A. In what account?

Q. Cash? A. There are no debits or credits in the cash account on the ledger.

Q. Were there debits and credits in the day's work in the cash account? A. Yes, sir, in the cash book.

Q. But the line is blank in the ledger for the day, is it? A. Always is, every day.

Q. Well now, taking the balance in cash on December 13th and the balance on the 14th, from what entries in other books would you perform the operations to show whether that was a correct extension, taking into account the actual work of December 14th? A. The general cash book; we always took our cash from the general cash book.

Q. I show you the general cash book. A. The general cash book on the 14th of December shows a cash balance of $12,491.38 as shown on the general ledger.

Q. Now will you take a piece of paper and jot down the operations for the day, so as to see whether that balance conforms to the work of the day as shown in the general cash book? A. I am taking these footings as they are in the cash book.

Q. Assuming them to be correct what do you find?

Mr. Stiefel: Hadn't the witness better state the operation he has now put on this piece of paper?

The Court: No, let counsel proceed in his own way.

Q. Assuming the footings in the cash book to be correct what do you find, giving us the different steps of the operation?

The Court: Well, you can do that.

A. Taking the footings as they are in the cash book and taking the cash account of the day be-

fore, which is $22,367.98, in order to find the cash as shown by the books on the 14th, to add the credit footing of the general cash book to the cash of the day before and subtract the debit footing, which should give you your correct cash.

Q. As of the fourteenth? A. As of the fourteenth.

Q. What do you find after performing those operations? A. I find the cash account should be $22,367.98.

Q. And what is it? A. On the ledger it appears as $12,491.38.

By the Court: Q. How do you account for the difference? A. To account for the difference I cannot without going through this ledger, your Honor.

By the Court: Q. What would $22,367.98 be made up of; would it be made up of money? A. Yes, sir.

By the Court: Q. Or would it be made up of money and the checks that we have heard so much about? A. Your Honor, it would be the sum total of the receiving teller's cash and the paying teller's cash at the close of business on that day, which would include currency, bills, gold, silver, nickels, and pennies, and whatever cash items were carried in the cash on that day at the close of business.

By the Court: Q. You mean the notes and checks? A. No, I mean just checks, whatever had been paid out for and not charged, checks that had come in and not charged regularly against accounts.

By the Court: Q. That is what I mean, it would include that? A. Yes.

By the Court: Q. Now the $9,876.60 that you have given us there, what would that indicate? A. That is the difference between the cash as obtained by using these footings and that on the ledger.

By the Court: Q. Well, would the difference between the two represent the checks that were held as cash? A. No, sir, they are included in the cash always, they are included just the same as if they were money.

By the Court: Q. There was no intention then to give the amount of what I will call actual cash on that day as distinguished from cash plus the checks? A. No, your Honor, if that were the case it would be necessary to carry an account on the general ledger of cash items. In every report that is called for at any bank, National or a Trust Company or State Bank or any kind, there is always on that printed form a place for your cash, so many bills, so much in gold, so much in silver, and at the bottom cash items, checks and cash items; those are items which are carried in the cash as cash and substituted for cash.

By the Court: Q. I do not understand what the object of this change was; if it did not have for its object the exclusion of the checks as cash what did it have? A. You mean the object of comparing those two cashes, your Honor?

By the Court: Q. The object of making the books state that which was not in accordance with the fact. A. The true cash should agree with the book cash.

By the Court: Q Yes, that I understand. A. The general ledger cash should be the true cash and should agree with the cash book. On the cash

book there appears an item cash $12,491.38, instead of the item of twenty-two thousand and odd which I got a few minutes ago by using the general footings.

By the Court: Q. I understand that, but what is the object of that? A. Why counsel asked me to do that, that is all.

By the Court: Q. I mean what was the object in misrepresenting the fact with reference to this cash, if the object were not what I have stated, namely, the exclusion of the checks held by the paying teller as cash? A. Well, the object was to make the ledger balance.

By the Court: Q. That was the only object? A. To get a trial balance.

By the Court: Q. Well, that explains it. A. Your Honor, I find I have used the wrong debit footing here; I see the cash is already included in that debit footing and it will make a difference in the figures.

By the Court: Q. You better go over them again. A. I didn't notice that until just this minute. I find the debit footing without the cash added on is $95,124.46 instead of $107,615.84; that would bring the cash up to $34,859.36 instead of $22,367.98, a difference of about $12,000.

By the Court: Q. Well, when the examining committee counted the cash did they count these checks that are held as cash? A. Yes, sir, whatever checks were included as cash at that time, I think there were very few, they were counted as cash, a very small amount I mean to say.

Q. Now turn to the item of treasurer's checks; is that a liability or an asset of the bank? A. Liability.

Q. Explain what you mean by liability, treasurer's checks? A. The treasurer's check is a check issued by the treasurer of the company, and practically it is a promise to pay.

Q. Now what would comprise the aggregate shown in the treasurer's check column of liabilities on a given day in the general ledger? A. The balance on the treasurer's check account would be made up of all outstanding treasurer's checks at that time that hadn't been regularly paid against that account.

Q. Now suppose you were to see a given figure on the general ledger of a bank on a given day, for example the figure which appears on December 14, 1912 in this ledger, $4,167.22, what books would you examine in order to confirm the correctness of that amount, the figure being opposite the treasurer's check item? A. In order to prove that account I would take the treasurer's check book first.

Q. Well then, what would you do with that, and then what would you take next? A. I would take my treasurer's check book and find out what checks hadn't yet been paid.

Q. Yes. A. That is providing the checks were regularly pasted in the book as they were paid.

Q. And what would you next do? A. Find out if it proved, if it proved I wouldn't go any further.

Q. Suppose you found that the checks had regularly been pasted in, those of them that had returned, and suppose you found some vacant stubs indicating checks had been issued and had not been returned and went to make up or supposed to go to make up the amount of treasurer's checks in the general ledger, how would you verify the fact

that a given check had actually been issued as it appeared to be on the stub, what book would you look at for that? A. I would look at the general cash book.

Q. Now while I think of it I want to go back for a moment to cash and ask you whether you find that you have changed the figure $12,491.38 cash December 14, 1912; look at the figure? A. Not to my knowledge, no, I see nothing there.

Q. Now turning back to treasurer's checks. I show you the treasurer's check book Exhibit C-92 and direct your attention to stub No. 7445 and ask you to tell me what you find there? A. On the stub?

Q. Yes. A. December 4, 1912, E. C. Pierson $4,000.

Q. Now will you look in the general cash book on that day and see whether you find any entry showing that such check had actually been issued on that date?

By Mr. Cornish: Q. Did all the transactions of the bank go through that bank? A. No, not all; they are supposed to go but once in a while there are entries go directly on the ledger, perhaps after hours or something of that kind, a debit and credit on the ledger, for instance, that will not appear on the cash book, which will not affect the footings, that is will not affect the cash.

Q. Do you find any entry in the general cash book indicating that a treasurer's check for $4,000 had been issued on December 4, 1912? A. No, sir, I do not.

Q. Had such treasurer's check been issued, and according to the regular practice of bookkeeping in the Roseville Trust Company would it have

been entered in the general cash book as having been issued? A. Yes, sir.

Q. Now look at the check No. 7445, Exhibit C-109, and at the endorsements on the back, and tell me if you can whether or not that check was still outstanding when the committee made their examination on December 14, 1912? A. Yes, sir, if the check was issued on the date as appears on the check and the stub.

Q. It was still outstanding on the 14th? A. Yes, sir.

Q. Now turn to December 14th in the treasurer's check book and look at stub No. 7463. A. Yes, sir.

Q. G. W Worth $980, and the corresponding check, and tell me whether that check was outstanding when the committee examined on December 14th? If you need to look in the general cash book to answer that question kindly state so? A. The same answer applies to that.

Q. That is, both of those checks were outstanding and the stubs blank when the committee examined it? A. Yes.

Q. Now look in the cash book on December 14th and tell me whether you find any entry indicating that that check had been issued? A. No, sir, I find none.

Q. Now look in the general cash book and tell me whether you find on that date any entry indicating that a four thousand dollar treasurer's check had been issued on December 14? A. I find an entry here of treasurer's check of $4,000 on the 14th, credited.

Q. An entry showing the issuance? A. Yes, the issuance.

Q. Now look in the treasurer's check book on December 14th and see whether you find any stub or returned check or any other evidence of the issuance on December 14th of such check? A. Not on that day, no.

Q. Now Mr. Smith, taking into account the facts which I have called your attention to would it have been possible to reconcile the treasurer's check account of December 14, 1912 with the general ledger? A. Why I think it would have.

Q. Explain. A. It would be necessary in the first place to take in that nine hundred and eighty dollar check, that is, take that in consideration and find out if it was really outstanding or not on that date; the stamp doesn't show that it was outstanding.

Q. Can you tell from the paying teller's proof book or the general cash book when that check was actually paid and returned? A. The check was actually paid on the sixteenth.

Q. Do you find any indication that it was paid on the 14th? A. There is an entry here of $980 on the 14th.

Q. As well as the 16th? A. There is also one on the 16th, yes, sir.

Q. Now I call your attention to the stamp of the first teller in purple ink on the check No. 7463, $980, dated December 14, 1912, and ask you whether or not that indicates that the check didn't get out of the bank? A. It does, it indicates that it was cashed by the first teller.

Q. Now in view of those facts will you state whether at that time the treasurer's checks outstanding could have been reconciled with the general cash book and with the balance shown on the

general ledger? A. Not without taking the nine hundred and eighty dollar check in consideration, that is, allowing for the non-credit of it, it never was credited.

Q. Well, explain more fully what you mean. A. It may have been credited the next day, I don't know, but on that very day it wasn't credited up to treasurer's checks, and therefore the treasurer's checks would naturally be $980 out if this check was charged as is indicated here on the teller's proof.

Q. Well, now, if a comparison had been made by the examining committee on that date between stubs and entries in the general cash book showing issuance, would or would not there have appeared discrepancies with respect to the four thousand dollar check and the nine hundred and eighty dollar check? A. The four thousand dollar check, as I say, it wouldn't have entered into consideration at all because it was credited upon that very day and was included in the balance.

Q. But it was not credited on the day it was issued? A. No, sir.

Q. And that would have been apparent to anyone who looked at the general cash book in conjunction with the treasurer's check book, would it not? A. Yes, sir; it was credited up just ten days later.

Q. Now I call your attention to the fact that the stub of No. 7445 is for the amount of $4,000 now and the check is for $4225; had that condition existed on the date of the examination could the account have been reconciled even assuming everything else was all right? A. It is according to who had the check; if the check was in transit out-

side of the bank no one would know except the man who issued the check what the right amount of the check was, except by taking the stub, which is $4,000; this check was issued by Jennings.

Q. Suppose that the examining committee had made a subsequent visit to the bank after the checks outstanding at the time of their first examination had returned, then how would the account have reconciled?

Question overruled.

Q. Now I show you the paying teller's proof as of December 14th. I haven't asked you whether any proof could be made of the cash as shown on the general ledger in the institution on that date without looking into the paying teller's proof book. A. It could be made, yes, sir.

Q. Well, was it made? A. I don't know.

Q Well now, I direct your attention to the figure $11,129.87 on that date, under checks paid Roseville Trust Company, which has been testified as having been changed either from or to the figure $7,129.87, and ask whether you can explain that change in relation to the four thousand dollar check, whether that signifies any connection to you? A. Why it signifies that the footing has been changed $4,000; I didn't make those figures and I cannot tell you what the $4,000 was without further reference to some other books.

Q. Now we will turn to general ledger as of May 21, 1913, the date of the last examination, in the balance column of individual deposits No. 1 appears the figure $124,192.20; this was changed from or to $224,192.20; can you tell me from your recollection which of the two figures, if either, was correct on that date, as representing the ag-

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gregate of the deposits in No. 1 ledger? A. My recollection is that two hundred and twenty-four was correct.

Q. You have a general recollection at least within hundreds of thousands of the aggregate of the deposits in the Roseville Trust Company within two months of its close, haven't you? A. I think so.

Q. Now look at the balance in that account as shown on May 20, 1913; what do you find? A. The figure there indicates $242,000.

Q. Now will you perform the operation of the extensions of the debits and credits on May 21, 1913, and tell me to what figure the amount would be correctly extended in the balances on May 21st? A. Appears to be a difference of $118,000 in that extension.

Q. Now will you perform the footing in the credit column?

The Court: What is the footing?

Mr. Hinds: Your Honor, it has been found that the footing in the credit column on May 21st in order to make the footing as now appears $972,022.07 would have to show the individual deposits No. 1 as $124,192.20 and the individual deposits No. 2 as $128,497.25, and not two hundred odd in each instance.

By the Court: Q. When were those erasures made in the figures that have just been stated with reference to the visit of the examining committee? A. I cannot remember, your Honor, just when those changes were made, but my recollection is they were made at the time intervening between the examination of the assets of the bank and the examination of the ledgers.

By the Court: Q. That is to say, while the committee were there? A. Why not necessarily while they were there in this case, but they returned you know to check up the ledgers, that is, to check up the proof on the ledgers, and my recollection is that this was done in the mean time, these figures were changed.

By the Court: Q. I understood that the work of the committee when they came back was limited to the checking up of the figures that pertained to the outside banks? A. No, no, sir, not entirely; they did come back to check up the deposits, the ledgers, because it wasn't always possible to get a proof off that night on the ledgers, it is a long job.

By the Court: Q. Well, how was it in this particular case, do you remember? A. As I remember it the bookkeeper took the proofs off at a late hour that night or the next morning before any entries were made on the next day's work, in order to get a balance or a trial balance on this very day at the close of business May 21, 1913, and after having made his proof these lists, adding machine lists were checked up at a later date by the committee or by certain members of the committee.

By the Court: Q. What was the figure first inserted, was it the correct figure or was it an erroneous figure? A. The first figure was an erroneous figure.

By the Court: Q. The first figure was? A. Yes, sir, according to this. Well, no, I beg your pardon it is just the reverse, the first figure was the correct figure.

By the Court: Q. Then while the committee

were there and when they saw the figures they were correct? A. Yes, sir.

By the Court: Q. And after that you changed them for the purpose of making the footings right; is that it? A. Of making the ledger footings right, yes, sir.

By the Court: Q. How were the ledger footings at the time the committee were there examining the originals, were they right or were they wrong? A. As I remember it they were wrong.

By the Court: Q. So that if anybody had added up the column they would have found that the footings were incorrect? A. Yes, sir.

By the Court: Q. After the committee left the figures were changed so as to leave the footings intact to make the additions correct? A. Yes, sir, that is exactly it.

Q. Now look at the day of the examination, May 21, 1913, and tell me what credits you find in the bills purchased item on that day? A. Sixteen thousand nine hundred dollars and fifteen thousand fifty-seven dollars and eighty-seven cents and seven hundred sixty dollars.

Q. Take a piece of paper and tell me whether or not all of those figures are needed to make the extension operation come out correctly for the work of that day? A. I think so, yes, sir.

Q. Now look at the general cash book and tell me what credits for the day's work of May 21, 1913 you find in there for bills purchased? A. Fifteen thousand fifty-seven dollars and eighty-seven cents and seven hundred sixty dollars.

Q. Now will you compare that with the credits that you find in the ledger for that day and tell me what the difference is? A. Seventeen thou-

sand instead of sixteen thousand nine hundred dollars.

Q. Now will you compare that difference of $17,900 with the $18,000 difference which you said you found to occur in the work of May 21, 1913 with respect to individual deposits No. 1 in addition to the $100,000 difference therein? A. Just a difference of $17,900.

Q. In other words, there is a difference in the extension of individual deposits on that very day of $17,900 and down below there is an exactly same difference in the bills purchased account on that day of $17,900; now can you tell me what, if any, connection one had with the other? A. One offsets the other.

Q. Now I call your attention to the small interlined figures written above the first figure but in the space of bills purchased credits on the day of the examination and ask you whether that represents a real or a fictitious transaction? A. I should say fictitious.

By the Court: Q. What is the fiction? A. There is no credit in the cash book at all for it, your Honor.

By the Court: Q. No credit in the cash book for what? A. For this $17,900.

By the Court: Q. The whole of it? A. Yes, sir, and nothing itemized, and in view of the fact that there is a counter—well, there is a discrepancy in the deposits No. 1 to offset it, I should say it was fictitious.

Q. Now can you say whether or not that small interlined fictitious credit of $17,900 was there in the column of May 21, 1913 when the committee made their examination? A. To the best of my recollection it was there.

Q. If it hadn't been there that extension on that day would not have proved, would it? A. No, sir.

Q. Now were the small figures which are written over the items of individual deposits, the two ledgers, on May 21, 1913, and which are needed to make up that $17,900 there on the day the committee examined or not? A. They were there I believe.

Q. And if they hadn't been there the extension of the work of that day in that column, May 21st, would not have proved, would it? A. No, sir.

Q. Turn to June 4, 1913 in the general ledger; now tell me what the cash appears to be on June 4, 1913 from the general ledger? A. Thirty-five thousand six hundred fifty-two dollars and thirty-one cents.

Q. Is that in your hand writing? A. Yes, sir.

Q. Look at that closely under a glass and tell me whether you find any indications of any erasure or change? A. I see none whatever.

Q. Has that figure ever been changed? A. No, sir.

Q. Now I show you Exhibit C-5 and ask you what that is? A. This whole document you mean?

Q. What is the document? A. This is a report of the Roseville Trust Company at the close of business the fourth of June, 1913, to the Department of Banking and Insurance.

Q. Whose signature is that opposite the word president? A. That is Mr. Odell's signature.

Q. Whose signature is the first one under directors? A. Charles C. Lurich.

Q. And the next? A. H. W. Foster.

Q. And the next? A. William Fairlie.

Q. Did they sign that paper? A. Yes, sir.

Q. Who prepared this report? A. This report is in the hand writing of Mr. Foster, I prepared it, the long sheet, and he copied it.

Q. Now turn to the item on the report showing the aggregate of cash, what do you find? A. Total cash of $51,943.36.

Q. Look at that with a glass and tell me if you find any indication that there has been a change in the figure? A. No, sir, no indication of any change.

Q. Did any of these gentlemen look at the general ledger on that day?

Mr. Newton: If you know.

Mr. Hinds: I added that before and it was objected to.

The Court: Whether he saw them.

Q. Whether you saw them do that? A. I didn't see any of them look at the general ledger.

Q. Did any of them say to you that they had made such a comparison? A. No, sir.

Q. Do you know whether the figure in the general ledger of cash was correct on that day? A. No, I do not.

Q. Do you know whether the figure of individual deposits No. 1, $137,196.22 was correct on that day? A. I believe it was not.

Q. Can you tell us from your recollection to what extent it was erroneous, approximately? A. One hundred thousand dollars.

Q. And the figure of individual deposits No. 2, $137,286.36 on that day in the general ledger? A. I think they were about $100,000 out at that time.

Q. Did you write those figures? A. Yes.

Q. Look at that with a glass and tell me whether you find any indication that they have been changed? A. I find no indication of ony change there at all.

Q. Turn again to the ledger column June 4, 1913, the account of the Irving National Bank, what do you find the balance to be? A. Twelve thousand five hundred fifty-five dollars and forty cents.

Q. What do you find the balance to be on June 3rd in that account? A. June 3rd the Irving account shows balance of $12,220.47.

Q. And what debits do you find as of the day's work, June 4, 1913 in the Irving account? A. Sixteen thousand one hundred thirty-seven dollars and seventy-four cents.

Q. Now look at the general cash book on that date and see whether you find such debits? A. The debits in the general cash book are the same as on the ledger, $16,137.74.

Q. And the credits? A. The credits are $15,802.81.

Q. Now will you perform the extension operation on that date to the balance of June 4th? A. The extension is correct.

Q. Now look at the account of the Irving National Bank on that page and tell me whether you find a debit balance at any point? A. Debit balance?

Q. Yes. A. Yes, they are all debit balances, that is due from banks.

Q. Do you find any the other way? A. No, sir, not on the 4th of June, 1913.

Q. On that page at any point? A. Oh, on the page?

Q. Yes. I should have directed your attention to treasurer's check with respect to that debit balance. Look at treasurer's checks on June 4, 1913 and tell me what you find. A. Find a debit balance of $1,725.17.

Q. What does that indicate to you? A. It indicates that more checks had been paid against that account than had been credited to that account.

Q. Is it a possible condition actually for a treasurer's check account to show a debit balance on the general ledger? A. It is a possible condition, yes, the condition existed there.

Q. More checks had been paid than had been issued? A. Yes, sir.

By the Court: Q. More checks had been paid? A. Than had been credited, I meant to say.

By the Court: Q. You cannot pay a check until you first make it, can you? A. I do not understand that you mean by that, more checks had been paid than had been issued. How in the world are you going to pay a check which had not been issued. I want the witness to explain that. A. I take that question as credited instead of issued.

By the Court: Q. Oh, that is a different thing altogether. A. That is the way I framed it in my mind but I misinterpreted the question.

Q. You have already stated, I believe, Mr. Smith, that the amount in the general ledger showing treasurer's checks is merely the aggregate of the outstanding checks that have been issued but not paid, and that amount always shows a liability of the Trust Company to the several holders of the treasurer's checks; is that correct? A. Yes, sir.

Q. What do you find on that date? A. A debit balance on the treasurer's check of $1,725.17.

Q. What do you mean by debit? A. Well, an overdraft practically.

Q. And what would that indicate to you had occurred? A. Indicates that there have been checks issued that have not been credited, or checks paid against that account that have not been credited up to that account.

Q. Would that be a regular condition of the bank, occurring in a bank? A. That is not a regular condition.

Q. What do you find in that account in the report which you have just testified about concerning treasurer's checks? A. A credit balance of $274.83.

Q. Would that have been a possible and normal condition for a treasurer's check account, as shown in the report? A. Yes, sir.

Q. Do you find any indication of any erasure in the ledger figure? A. I do not.

Q. Or in the report? A. No, sir.

Q. If a comparison had been made between the treasurer's check figures in the report and the treasurer's check figures in the ledger the figures would have been found on different sides of the account, would they not?

Mr. Stiefel: I object. I find this account here shows treasurer's checks outstanding. I do not understand that that necessarily means the same thing as the item which is entered here in this book, treasurer's checks outstanding, if it does I think it is up to somebody to explain it and show its identity.

The Court: Let the witness explain it.

Q. Mr. Smith, what does treasurer's checks or treasurer's checks outstanding mean when found on report or on a general ledger?

Mr. Stiefel: I object to the first part of it, treasurer's checks or treasurer's checks outstanding; the mark is there, treasurer's checks outstanding.

Q. What does the expression treasurer's checks mean on a report to the Banking Department?

The Court: Is there any such expression there?

Q. No, it is outstanding. I will ask you first what does treasurer's checks mean on a general ledger? A. On our general ledger it means checks, treasurer's checks that had been issued and not paid and that were still outstanding.

Q. What does treasurer's checks outstanding mean on the report to the Banking Department? A. As far as the Roseville Trust Company is concerned it means the same as treasurer's checks on the ledger.

By the Court: Q. On the ledger? A. Treasurer's checks account on the ledger I meant to say.

By the Court: Q. That does not convey anything to me; I do not understand what treasurer's checks outstanding means if it does not mean that there are checks given by the treasurer which have not been paid. If anybody asked me how many checks I had outstanding what I would understand by that would be how many checks had I given which still remained unpaid. Now you say that the expression as it is contained in the report means something different?

Mr. Hinds: No, he said meant the same.

The Court: No, I understand the witness to say it meant something different.

A. I thought I stated that the treasurer's checks outstanding on the report were the same in the Roseville Trust Company, meant the same in the Roseville Trust Company as the account on the general ledger which reads treasurer's checks.

By the Court: Q. Treasurer's checks means merely that the treasurer has given checks. Treasurer's checks outstanding means that he has given checks which have not as yet been paid. Now the question is what does the expression treasurer's checks outstanding mean in the report; does it include paid checks, or does it refer only to those checks which have not at the date of the report been paid? A. It refers, your Honor, to checks which have been issued by the company and have not yet been paid, checks that have not been charged, haven't come in yet, they are still outstanding.

By the Court: Q. That is what it means on the report? A. Yes, and that is what it means on the ledger as well.

By the Court: Q. That is what it means on the ledger too? A. Yes.

Q. On this particular day do you find the item treasurer's checks on the ledger as an asset or a liability of the bank? A. An asset.

By the Court: Q. One moment. Treasurer's checks outstanding would convey to my mind the notion of a liability.

Mr. Hinds: Precisely.

By the Court: Q. Let the witness explain it. Now do they appear in the report as a liability or

as an asset? A. They appear as a liability in the report.

By the Court: Q. Well, then that is right, the report is right? A. In a different amount than is on the ledger.

By the Court: Q. Well, it is right as far as it goes, it is right in that it appears as a liability? A. Yes.

By the Court: Q. Now what are you talking about when reference is made to it appearing as an asset? A. It appears as an asset on the ledger of that day because of an overdraft in that account, there has been a credit overlooked or a credit has not gone through for a check that has already been paid which overdraws the account.

By the Court: Q. Overdraws what account? A. The treasurer's check account; instead of being on the credit side or on the liability side it throws the balance on the debit side or overdraft and it becomes an asset, so to speak.

By the Court: Q. Not really, but in bookkeeping? A. In bookkeeping only.

Q. Does that occur frequently in the general ledger of a well-run institution? You have been in other banks, haven't you? A. Yes, sir.

Q. Is it a matter of practuce for an item of treasurer's checks to appear as an asset on the general ledger? A. No.

Q. If the account is correctly kept can the item of treasurer's checks appear as an asset on the general ledger? A. No, sir, if it is correctly kept, no.

Q. Now turn to—

The Court: Are you going to another report?

Mr. Hinds: Yes, your Honor.

The Court: Before that report is left I think Mr. Smith better explain how it was made up, I mean the *modus operandi.* He says that Mr. Foster copied some figures that he had himself prepared; now Mr. Smith has not stated what was done after Mr. Foster had written it out. I want to know all that was done from that time up to the time when it was either mailed or in some other way transmitted to the Department.

A. After Mr. Foster completed copying the statement, the report, I signed it and got Mr. Odell to sign it, and the committee of three signed it.

By the Court: Q. Were they all there together? A. No, sir, they were there at different times; whichever one of the committee would come in, or whichever one of the directors happened to come in the bank I would ask them to sign it.

By the Court: Q. Tell us what they did when you asked them to sign it, what did they do? A. They usually looked over it.

By the Court: Q. You signed it first, as I understand? A. I believe I signed all of them first.

By the Court: Q. Then what did the others do when they signed? A. They looked over the statement and signed it, that is all I remember.

By the Court: Q. And they were not present at the same time? A. No, sir.

By the Court: Q. Then what did you do with it? A. After Mr. Odell signed it we usually went before a notary public together.

By the Court: Q. Well, you swore to it? A. Yes, it was sworn to by us.

By the Court: Q. Then what did you do? A. Then after it had been signed by the other directors, the three, I mailed it to Trenton to the Banking Department.

By the Court: Q. That was the whole sequence of events? A. That is all that happened, as I recollect, after the work on the statement had been done.

Q. With reference to the day that the report is dated, June 4, 1913, when did you receive the request from the Banking Department for the report? A. I should say a day or two after that date, perhaps four or lve days, it usually came in during the same week, the request, sometimes it would come in a day or two after, and sometimes it would be several days after the date.

Q. That is, the request would first come and then four or five days after that, but usually in the same week, the report date would occur and the report would be made? A. The request would come the same time as the report, they would come together.

Q. When did the request come with reference to the date that the report was made? A. Always after that date.

By the Court: Q. The request came after the report was made up? A. After the date of the report. For instance, if we had to make up a report for the fourth of June, we wouldn't get the request until perhaps the seventh or eighth of June to send the report.

By the Court: Q. But your answers to counsel's questions would seem to indicate that you

had prepared the report before they sent any request that you should send it in. You do not mean that? A. No, sir.

By the Court: Q. Well, that is what you said, just explain that. A. We usually got these, your Honor, these requests for reports.

By the Court: Q. Well, up to that time you hadn't made any report or any preparation for a report? A. Not at this date, no, sir.

By the Court: Q. But when you got the request you made up the report as of a certain date that had passed? A. Yes, sir.

By the Court: Q. Now I understand. A. The blank form would come at the same time, we wouldn't have any form or anything.

Q. Now at the time you got the request was it or not a fact that the entries had already been written into the general ledger for the date as of which the report was to be made? A. Why, certainly, yes.

By the Court: Q. Would they ask you to make the report as of a certain date? A. Yes, sir, always at the close of business on a certain date.

Q. I observe proof of publication of this report in Newark Evening News; can you tell me who attended to its publication? A. I did.

Q. Now look at the ledger as of April 4, 1913, look at the individual deposits one hundred and sixty-five thousand odd in No. 1 Demand Ledger, and eighty-five thousand dollars in No. 2 ledger; can you say from your recollection whether or not those figures correctly represented the aggregate of demand deposits? A. They did not.

Q. Can you say to what extent approximately they were out of the way, and in what direction?

A. I don't remember exactly, but I should say between one hundred thousand and two hundred thousand dollars.

Q. At that date was the condition of the individual demand ledger such that had several balances been footed up the result would have been to that extent different from the figure appearing in the general ledger? A. If a proof had been taken off on the ledgers?

Q. Yes? A. Yes, I believe so.

Q. I show you another report, Exhibit C-106, dated April 4, 1913, and ask you if the signatures—

The Court: That was only about three months before.

Mr. Hinds: Four months.

The Court: I suppose these reports were made annually?

Mr. Hinds: I thought you meant before the bank closed, yes, this was only two months before.

A. There were about three a year, I think.

By the Court: Q. At uncertain times? A. Yes.

By the Court: Q. You never knew when the request would come in? A. No, sir.

Q. I ask you whether the purported signatures, William Fairlie, H. W. Foster and Harvey Mott are their actual signatures? A. Yes, sir.

Q. And the signatures of yourself and of William P. Odell are actual, are they? A. Yes, sir.

Q. What is the amount of cash which you find in this report, the aggregate? A. $21,064.44.

Q. Now will you look at the paying teller's proof book as of that date, and the receiving tell-

er's proof book on that date, and I give you a piece of paper and ask you to tell me what the amount of cash was in the institution at the close of April 4, 1913, as shown by those books; now referring to actual cash and not cash items? A. $9,930.24.

Q. How is that divided? A. Bills, gold, silver and nickels and pennies.

Q. What amount do you find for gold in the report on that date? A. Fifteen dollars.

Q. How much in the proof books? A. Fifteen dollars.

Q. How much do you find in the report? A. Thirty dollars.

Q. Fifteen dollars difference. Now what do you find as to United State currency and National Bank notes in the report? A. $20,391.00.

Q. And what do you find there was in the institution from the proof books on that day of United States currency and National Bank notes? A. $9,336.00.

Q. A difference of approximately $11,000. Now what do you find there was in silver, as shown in the report? A. $1,210.80.

Q. And in the proof books what do you find? A. $430.45.

Q. A difference of about $800. In nickels and cents what do you find in the report? A. $347.64.

Q. And in the proof books? A. $137.79.

Q. Now look at the item check and other cash items in the report, what do you find? A. $415.80.

Q. I observe that that refers to a schedule F, and I show you another paper and ask you if that was part of the report and containing the schedule F referred to in the report? A. Yes, sir.

Q. Do you find the checks and other items classified or listed? A. Yes, sir.

Q. How many items in the report? A. Two items.

Q. Tell me how many cash items are shown in the paying teller's proof on that date? A. How many?

Q. First tell me the amount, the aggregate amount? A. Paying teller's proof?

Q. Yes. A. $5,416.36.

Q. And in the receiving teller's proof? A. $2,415.80.

Q. A total of what? A. $7,832.16:

Q. Were there more than two items? A. I think so.

Q. Can you by looking at those books tell me how many items there were? A. No, I cannot.

Mr. Hinds: If your Honor please, we do pretend to have shown all the irregularities existing on any of these days but only those we can bring out conveniently from this witness; others will be matters of demonstration from other books and records, and that applies to the examination dates as well.

Q. Turn to the general ledger as of February 4, 1913, or first let me ask you respecting the ledger as of April 4, whether those figures are in your hand writing? A. Yes, sir.

Q. And whether any of them have been changed? A. I don't see any changes there at all.

Q. To the best of your knowledge and belief no changes were made after that date? A. No, sir, to the best of my knowledge there were not.

Q. And let me ask you also in whose handwrit-

ing the body of the report of April 4th is? A. My writing.

Q. What do you find individual deposits No. 1 to be, as shown in the general ledger? A. $10,111.58.

Q. Did that correctly state the aggregate of deposits in that ledger, judging from your recollection? A. I don't think it did, no.

Q. Can you tell us to what extent, approximately it was out of the way on that date? A. No, not on that date I cannot.

The Court: As I gathered from what I have so far heard the difficulty about the ledgers consisted in the fact that the accounts were sometimes incorrectly entered. I have not as yet heard any evidence going to show that the additions of the accounts as actually entered were erroneous.

Mr. Hinds: I am glad your Honor brings that out, because we are now referring only to discrepancies between what the individual ledgers show, correct or incorrect, the balances to be; the discrepancies between pass books and individual ledgers we have not been discussing at all this morning. Is that correct, Mr. Smith?

A. Yes.

Q. Is that your understanding of all of your testimony this morning? A. Yes, sir.

Mr. Hinds: When I have asked him as to the aggregate amount of deposits as shown on the individual demand ledgers I have not referred to any of the instances where there was abstraction connected with the pass book; that is an entirely different subject.

By the Court: Q. Do you say that the figures on the general ledger did not correspond as a rule to the proper aggregates of the individual ledger accounts? A. After a certain date, your Honor, they did not.

By the Court: Q. After what date? A. Well, early part of 1912 I think.

Q. And that was true to the best of your recollection on February 4, 1913? A. No, it was not, I can't tell on that date just what the status was.

By the Court: Q. Well, but these individual ledgers were kept by the bookkeeper and I suppose added up by the bookkeeper, were thy not? A. Yes, sir.

By the Court: Q. Well, then he put in the book or somewhere aggregates that were false; is that so? A. No, sir, the aggregates or the balances on the general ledger which corresponded to the footings of the individual accounts day by day were over-extended or under-extended.

By the Court: Q. Then you did not have the aggregate of the individual accounts ascertained by anybody? A. Only about twice a month the individual ledgers would—there was a proof taken off on the individual ledgers, while every man's account was extended every day, yet the proof with the general ledger was taken off about twice a month.

By the Court: Q. Well, that proof as taken off was correct, was it not, as it was taken off? A. I think so.

By the Court: Q. It might have been changed afterwards. Well, when it was taken off in that way was it changed? A. The balances were usu-

ally correct in the general ledger, when the balance was taken off by the bookkeeper.

By the Court: Q. Then at other times for the purpose of filling out the general ledger you resorted to fictitious balances? A. Yes, sir.

By the Court: Q. That is the way it was? A. Yes, sir.

Q. Turning back to April 4th and June 4, 1913, that condition existed on those dates, didn't it? A. I have already stated that, yes.

Q. Now you have said that there appeared on the general ledger not only over-balances but under-balances of these individual demand ledgers; which was the more frequent? A. Under-balances.

Q. When an over-balance did occur what was the explanation of that? First, I will ask you whether you know of any instances at all where over-balances did occur? A. I didn't say over-balances, I beg your pardon, I didn't mean to say so, I said either over or under-extensions; the over-extensions would naturally be made to make up the under-extensions of the previous day.

Q. That is, to bring the account correct, whereas it had previously been incorrect? A. Yes.

Q. Did it ever occur, so far as you know, that the ledger stated an amount more than the aggregate of the individual demand ledgers? A. No, I don't remember any such instance.

Q. Now what is the amount of cash as it appears on the general ledger on February 4, 1913? A. Well, there are two items in the cash here, $25,068.96, and interlined with the cash is an item of $15,225.

Q. An aggregate of how much? A. $40,293.91.

Q. Is that interlined figure in ink or in lead pencil? A. That is in lead pencil on this date.

Q. Look in the general cash book and tell me what the amount was there on that date, February 4, 1913. Now I call to your attention a page, the top of which bears the date February 4, 1912, I ask you to inspect the book and tell me whether that is intended for 1912 or not, if you can? A. The day before it says 1913, February 3, 1913.

Q. Whose handwriting is the February 3, 1913? A. That was a clerk, I have forgotten his name now, who was with us for a short time.

Q. And the stamp on the 4th? A. Shows February 4, 1912, rubber stamp, yes.

Q. Well, now, after looking at the book can you tell me whether or not that is the work of February 4, 1913?

The Court: Well, I see February 4 ,1912, back there.

A. Yes, no doubt the stamp hadn't been changed at all. There is where it is written in again, January 27, 1913.

Q. Well, now, turn back to December and see what year you have for that? A. December 28, 1912, 30, 31.

By the Court: Q. The stamp has not been changed? A. No.

Q. Can you identify that as the page in the general cash book for February 4, 1913? A. Yes.

Q. Tell me the amount of cash as shown by the general cash book on that date? A. $25,068.91.

Q. And that is a difference of exactly fifteen thousand—A. Two hundred and twenty-five.

Q. Fifteen thousand, two hundred and twenty-

five. Are those penciled figures your own? A. Yes, sir.

Q. Were they there on February 4, 1913? A. I think they were.

Q. Were they there on the date that this report was verified, namely, February 8, 1913? A. Yes.

Q. Now what amount of cash do you find in the report? A. $29,433.20.

Q. Differing by an odd amount of about four thousand dollars from your ink figure and about eleven thousand from the combined pencil and ink figures in the general ledger; is that right? A. Yes, that is about right.

Q. Now I notice that the cash as contained in the report is itemized into different groupings, will you turn to your paying teller's and receiving teller's proof books on that date and make the comparision between the several varieties of cash as shown in the report and that shown in the proofs on that date? A. $20,728.

Q. Is that in the proof books? A. Yes.

Q. What amount do you find in the report? A. $25,953.

Q. Now compare the cash items in the report with those in the proof books? A. $1,485.71 cash items.

Q. What amount do you find in the report? A. $360.71.

Q. And how many items? A. Three items.

Q. Were there more than three items in the bank at that time; does the figure fourteen thousand odd enable you to say whether there were more than three items? A. Fourteen hundred.

Q. Fourteen hundred. A. I can't tell that,

that is just the day, $1,456.55 was the receiving teller's cash items of that day.

Q. How much in the paying teller's? A. $29.16.

Q. Can you identify this page containing schedule F as a part of the report Exhibit C-105? A. Yes, that is part of it.

Mr. Hinds: I suggest that those schedules be marked also, your Honor, with the same exhibit number.

Marked Exhibits C-105a; C-105b; C-105c.

Q. This schedule B, is that part of that report? A. Yes, I suppose it is part of this report, they all have schedule A, B, C, D and so on.

By the Court: Q. I do not understand why the receiving teller should have any cash, is that ordinary practice? A. Yes, sir; at the close of business that day he has all the cash he has taken in during that day, and it is necessary for him to prove his cash first before he hands it over to the paying teller, and that is not included in the paying teller's cash until the following morning and then the paying teller starts off with a figure that is made up of both the receiving teller's cash and the paying teller's cash of the night before.

By the Court: Q. Well, there is no such thing as cash in the safe or in the vault, as distinguished from cash in the receiving teller's or paying teller's hands? A. Except, your Honor, as it appears on the paying teller's proof book; he has some of his cash in reserve in the vault all the time that he very seldom uses.

By the Court: Q. Well, that appears just as well as the cash that he has in the cage? A. Yes.

Q. Then as I understand it the paying teller has all the cash except the cash which the receiving teller has as the result of the day's work? A. Yes, sir.

Q. I show you on that February 4, 1913 report, Exhibit C-104 what purports to be the signatures of Mr. Fairlie and Mr. Foster, Mr. Mott, Mr. Odell, and also yourself; are those their signatures? A. Yes, sir.

Q. In whose hand writing is the body of the report? A. It is in my own hand writing.

Q. Who attended to the publication in the Newark Sunday Call of that report on that occasion? A. I did.

Mr. Hinds: I assume that these schedules are in evidence, having been offered in evidence previously, and I will have the April 4th schedule so as to have it marked along with the report, and the June 4th.

Marked Exhibits C-105 and C-106.

By the Court: Q. Let me ask another question. When the receiving teller makes up his proof does he count as cash the checks that come in as well as the United States currency and the gold and silver? A. The checks that come in that are not regularly paid against an account on the ledger.

By the Court: Q. Well, you go to the bank and you make a deposit partly of checks and partly perhaps of bills; now it is not known of course at that time whether those checks are good or not, in all probability they are good, but are they counted as cash received on that particular day, or are they dealt with otherwise? A. They are dealt with otherwise, as a rule, unless there is

something unusual the matter with the check, the man's account, for instance.

Mr. Hinds: Your Honor is speaking of checks coming in and not necessarily on the Roseville Trust Company?

The Court: I mean a depositor of the bank receives checks from various people for work done, and what not, and he goes to the bank and he lists the checks and he lists the money, if he is going to deposit money, and he hands it in to the receiving teller. Now what I want to know is whether or not the checks that are so handed in, drawn upon any number of banks and by acsh or whether they are considered as something else.

A. No, sir, they are not considered as cash; the checks on their own institution, for instance go to the bookkeeper and a record is made of those.

By the Court: Q. Separate record? A. Yes, sir.

By the Court: Q. I was not quite sure of it, I supposed that was so but I wanted to be certain that I was right. A. And checks on other institutions go in through the exchanges and a record is kept of those; all charges to the ledger, either individual or general, are copied on the proof, and the difference between the sum total of all those charges and the sum total of all the credits is the actual cash, whatever that is made up of; that is made up of bills, silver, gold, and whatever few cash items he may have.

Q. Now on these reports to the banking Department we find a separate line for cash items but we do not find a separate line for cash items

in your general ledger. On any particular date are you able from the books of the bank to separate your actual cash from the cash items which you are including in the cash? A. Not from the general ledger, but from the teller's proof books.

Q. That was the purpose of the comparison with the proof book, your Honor. Now turn to November 26, 1912; is that in that ledger? A. Yes.

Q. Is that work in your handwriting? A. Yes, sir.

Q. Has it been changed? A. Not to my knowledge.

Q. What is the amount of cash as shown in the general ledger on November 26, 1912? A. $21,737.97.

Q. Now turn to the proof books of that date and tell me how much of that was actual United States currency and National Bank notes? A. November twenty-sixth?

Q. Yes. A. You want the bills?

Q. Just as given on the report, the National Bank notes and United States currency; that means bills, does it not? A. Yes, sir; $16,312.00.

Q. And what amount do you find on the report? A. $19,212.

Q. In whose handwriting is that? A. My own hand writing.

Q. Has that been changed? A. No, sir.

Q. Look at cash items in the two proof books? A. $2,936.54.

Q. And on the report? A. $36.54.

Q. Do you recognize as correct and authentic the signatures on that report of Mr. Odell, yourself, Mr. Monroe, Mr. Foster and Mr. Lurich? A. I do, yes.

Q. Do you recognize these schedules as a part of that report? A. No, this is not a part of that report.

Q. These other two (indicating)? A. Schedule B is, and schedule E, F, H, D and G.

Q. On schedule F how many items, check items or cash items do you find? A. Two.

Q. Were there more than two going to make up the sum of $2,936, which is shown on the proof books? A. No doubt there were.

Mr. Hinds: May the schedules be marked along with the report; I think none of them have been marked, so I offer them in evidence as one exhibit.

Marked Exhibit C-186.

Q. Mr. Smith, you have told his Honor the different steps connected with the preparation, signing and filing and publishing of the report of June 4, 1913; does your testimony apply equally to the other reports to which you have just testified? A. I testified as to the custom after the report was made up.

Q. Well, does your testimony hold for the other reports which you have just referred to? A. Yes, sir, I think so, in every case.

Q. Have you anything to add with respect to those other reports in respect to the different steps having been different from the one which you testified to? A. No.

By the Court: Q. Was there any selection of directors to sign the reports; I notice that three signed every time, three in addition to the president and yourself; was the signing a casual occurrence or were these gentlemen designated to sign? A. It was simply a casual occurrence, whoever happened to come in first signed it.

Q. I direct your attention, Mr. Smith, to the testimony of Mr. Odell and others of the defendants that the shortage in the cash of the institution in the year 1913 was occasioned by large withdrawals aggregating $100,000 or so from the Claflin account; can you from your recollection tell us whether or not there were withdrawals of such large amount from that account in the year 1913? A. Not from the Claflin account, no, sir.

Q. That is, you can tell us from your recollection that that was not the fact; is that the way I am to understand your answer? A. That is to the best of my recollection true.

The Court: Does not the book itself show?

Mr. Hinds: Well, the book itself would show, but I want to show that it was so plain a matter that even this witness could recollect it.

The Court: Is it your contention that the books in that regard were erroneous?

Mr. Hinds: No, that they were correct, and that Mr. Odell testified from his recollection, and other witnesses were incorrect in their recollection.

The Court: I suppose that if they rely upon the testimony of the witnesses in that regard you have a right to call witnesses on that subject, too, I suppose that is true.

Mr. German: But we haven't called the witnesses yet.

The Court: Mr. Odell testified to that effect.

Mr. German: That was cross-examination.

The Court: Well, it was part of the testimony.

Q. Now, Mr. Smith, did it occur in the career of the Roseville Trust Company that money was borrowed by it from other banks? A. Did it occur; yes, sir, it did.

Q. When did that start? A. Oh, I think in 1912.

Q. About what part of the year? A. Summer, I think, or fall.

Q. And what circumstances occasioned the borrowing? A. Well, I can't remember any one circumstance, but our loans were considered very high at that time, and during the year of 1912 our deposits had been reduced considerably by one account having made heavy withdrawals from the Roseville Trust Company.

Q. What account was that? A. H. B. Claflin Company.

Q. During the year when? A. 1912, I think it was 1912.

Q. Now to refresh your recollection I show you the account of Claflin & Company in the individual demand ledger, and ask you to point out where that withdrawal occurred and when that occurred, Exhibit C-151. I have shown you the ledger actively in use when the Trust Company closed; do you desire to look at the binder containing the earlier pages of the account? A. I do not remember just the date of it but perhaps it was before this, 1912.

Q. Now this ledger account starts December 12, 1911, does it not? A. Yes, sir.

Q. Look at the binder containing earlier pages of that account and refresh your recollection and

see if you can tell me when that large withdrawal occurred? A. It was in the summer of 1911, or fall.

Q. Look in September, 1911, and tell us whether there was another considerable rise and withdrawal? A. Yes, there was on September 20th or 19th, for one day only, that is all.

Q. Having refreshed your recollection from the book do you recall that there was after September, 1911, any withdrawal of such amount as $100,000 or over? A. October, 1911, is the time I had in mind; there was a withdrawal of $143,000.

Q. And after that was there any withdrawal of anything like that amount? A. No, I think not.

Q. Now does that refresh your recollection as to the time when the Trust Company first borrowed from other banks? A. No, it does not, I don't remember just the date we started to borrow, I thought it was 1912, the fall of 1912, or the summer of 1912, either one.

By the Court: Q. That is your present recollection? A. Yes, sir.

Q. Now in view of what you have seen can you tell us what the circumstances were which prompted that borrowing from other banks? A. Well, simply needed the money, that is all, loans were high and deposits were low.

Q. Now when you say the deposits were low are you referring to the deposits as they were shown on the individual demand ledgers or the deposits as they were shown on the general ledgers? A. Deposits as they were shown on the general ledgers.

Q. These were low? A. Yes, sir.

Q. What was the fact as to the condition of the deposits, as compared with the low amount shown on the general ledger at that time? A. Why the general ledger I think was a large amount under the real amount of the totals of the individual ledgers.

Q. And were the real amounts shown in any books of the bank at that time? A. The real amounts?

Q. Yes. A. No.

Q. Did they appear on the individual demand ledgers not in the aggregate but several amounts? A. Oh, yes, the several accounts were in there, yes.

Recess.

Q. Before the noon hour you testified, as I recollect, that on April 11, 1912, the date of an examination, the hundred thousand dollars shortage which you said was represented on the tenth in a footing appeared in the individual deposits partly. Fearing that you may have misunderstood my question I ask whether you desire to correct your testimony in that respect? A. The difference appeared in the bills purchased and the individual deposits.

Q. How much in each? A. Fifty thousand dollars in each.

Q. Now how about the balances on April 11th, can you say whether the balance of deposits as compared with the individual demand ledger balance was correct or incorrect on April 11th? A. I don't think they were correct so far as No. 2, individual deposits No. 2 are concerned.

Q. How about No. 1? A. This is 1912, isn't it?

Q. Yes. A. I cannot say as to No. 1 without looking back further.

Q. I haven't asked you, but I will, whether to the best your recollection on April 11, 1912 the balances in the depository banks as shown in the general ledger were correct? A. That I couldn't tell you without looking up, from memory I couldn't tell you whether they were right or not.

Q. Can you from memory tell me whether the balances were correct on the date of the December 14th examination? A. My recollection is that some of the balances were not correct.

Q. And on May twenty-first? A. The same with that date too, that is 1913.

Q. Now I notice that on May twenty-first there appears a balance in the Union National Bank of Newark of $70,000; what is your recollection as to whether or not that was correct on that date? A. My recollection is that it was not correct.

Q. Have you any recollection as to the approximate extent to which it was not correct? A. Not without consulting proper books.

Q. Now assuming that your recollection that it was not correct is a correct recollection, would that discrepancy have appeared if the books had been reconciled properly, if the account had been reconciled by the examining committee?

Judge Collins: I do not understand the use of the word "properly"; that is a conclusion.

Q. Regularly, I will say.

Judge Collins: Or that either. I object to that.

After discussion, question overruled.

Q. Did it frequently occur that the general ledger showed balances in depository banks which were greater than the balances as they actually existed? A. Yes, sir.

Q. Will you tell us what was your method in accomplishing that result, how you went about it? A. The method sude was at the end of each month, or at the time of an examination, items in transit, that is, deposits sent from the Roseville Trust Company to other banks were of a fictitious amount, that is to say, the amounts were raised.

Q. By that you mean that the items—

The Court: Raised where? I do not understand.

A. On the books of the Roseville Trust Company.

By the Court: Q. If you sent, for instance, to the Union National Bank $1,000 you would put it on the books as $2,000? A. Yes, sir.

By the Court: Q. That is what you mean? A. That is it, yes, sir.

Q. Would or would not that discrepancy have appeared upon calling later for a statement of the vouchers which were then in transit?

Mr. German: I object to this question in this form. Why shouldn't the question be "How would this have been ascertained"?

Mr. Hinds: I will accept that suggestion and put it that way.

The Court: The time taken to send a check from Roseville to the Union Bank in Newark would only be a few hours, it would depend of course on what mail you happened to strike, but if you put it in the morn-

ing mail it would reach Newark in the afternoon.

A. It would if it were done that way.

By the Court: Q. Tell us how it was done? A The deposits in the Union Bank were made by messenger often times, and other deposits were made by mail at the close of business each day and would arrive in the Union National Bank and appear on their books the following day.

By the Court: Q. How would it be possible to deceive anyone who made an examination if he made that examination two or three days after he had looked at your books? That is what I do not understand. A. Why, your Honor, if an examiner should come to the bank, or if the the bank should be examined by a committee—today is the nineteenth, isn't it?

By the Court: Q. Yes. A. The examiner would write out to the different banks for a statement showing the balance to the credit of the Roseville Trust Company in various institutions that they were doing business with; that statement would come back in the course of a few days from these banks, showing the business that had been transacted with that bank up to and including that date, and showing the balance as well. In order to prove the balance on the ledger of the Roseville Trust Company it is necessary to take the balance as shown in the Union National Bank, for instance, and add to that balance all items in transit, either from the Roseville Trust Company to the Union National Bank or from the Union National Bank to the Roseville Trust Company. Items in transit from the Roseville Trust Company to the Union National Bank would not ap-

pear on that statement but would appear in the proof of the balance on the book that we kept the account of the reconciliation of those bank accounts in, and unless there was a statement given or asked for from these corresponding banks showing the letters in transit had been received, which would be a day or two later than the balance as shown in their statement, there would be no check on items in transit.

By the Court: Q. Well, then, what you would do would be to create a fictitious transit; you would say that you were going to make a deposit but you would never in fact make it, is that it? A. Except that it appeared so on the books of the Roseville Trust Company.

By the Court: Q. You would put it on your books as a complete transaction so far as you were concerned? A. Yes, sir.

By the Court: Q. But in point of fact if the thing to be deposited was a check you would not send the check? A. No, sir.

Q. And if a second inquiry had been made of the depository bank and the depository bank had correctly reported what, if any, items were actually in transit at the time of the first statement, the discrepancy would have been discoerced, would it not? A. Yes, sir.

Q. Did the examining committee at any time make such second inquiry of depository banks?

Mr. Stiefel: How can this witness answer that?

Mr. German: I object to that.

The Court: Inquiry as to a date later than the date of the examination?

Mr. Hinds: Yes.

Mr. German: I object to it unless he knows.

The Court: Well, he was there all the time and he ought to know. If they did not do it all he can say is that they did not do it to his knowledge or in his presence; they might have reported to him that they did do it or did not do it.

Mr. Stiefel: Isn't it proper in all these cases to ask the preliminary question of a man who wasn't present: Do you know any thing about what the examining committee did? If he says "I don't know," then the inquiry cannot be pursued any further.

The Court: No, here is the case of an official who was always there, he must of course have known what was going on while he was there, and this inquiry is directed to find out what he knew about this particular subject while he was in the company of the examining board.

Q. (Question read.) A. Not to my knowledge.

Q. Did you make such second—

The Court: Well, what was the necessity of the witness doing it, he knew all about it.

Q. Now, Mr. Smith, you have told us one instance, the Union National Bank, May 21, 1913, where your recollection is that the seventy thousand dollar balance was incorrect. Were there any other instances of any other banks, either on that or any other examination date, where to the best of your recollection the balances in depository banks were overstated in the general ledger?

A. Yes, sir, there were.

Q. Now can you recall any other accounts or

any other dates? A. The Irving National Bank of New York.

Q. What date? A. I can't recall the dates, 1913, and the New York State National Bank of Albany, I think.

Q. When you say you cannot recall dates, you do recall that it was the examination dates; is that what you mean? A. Yes, sir.

Q. Now can you recall what each particular member of the examining committee did on the occasion of the last examination? A. I think Mr. Sexton checked up the bank balances with me several days after the examination was made, but I cannot recall what each individual on the committee did at that examination outside of that.

Q. Now did you at any time before the examining committee arrived—

The Court: I do not quite understand how anybody could have been misled in that way. The examiner would say: What is your statement of the balance to your account in the Union National Bank, and you would say so much; well, he would see from the books, or might see from the books that on the very day on which he made the inquiry there was or purported to be a new deposit. Now why would he confine himself in his question as to the depository bank to what was deposited on the very day on which he made the examination; he would naturally ask what was the deposit on two or three succeeding days, allowing a sufficient time to elapse between the time when the deposit was actually mailed and the time when it was received. I

do not quite understand that. I do not think any man if he were making an examination and knew anything at all about the subject matter would confine his question to the depositing banks to the question of the amount of deposit on the particular day on which he was sending the letter; he would know, or ought to know, that there were deposits made on that day. How was that, I do not understand it. Suppose I was one of the examining board; I would say to you: Now, Mr. Smith, what is the amount of the deposit in the Union Bank; you would say so much; I would say to you: Does that include checks that you have sent for deposit yesterday or today, and you would say yes; now I would know that in the regular course of business those checks would not be received on the day on which you sent them, consequently if I were trying to make a proper examination I would go a little further than the day on which I was sending them and find out what the balance was on two or three succeeding days; would not that be the ordinary way in which that thing would be done by a business man?

A. It would be the proper way, your Honor, to find out if the deposits sent on that day of the examination had been received by the corresponding banks and had been included in the balance the next day or the following day, but as it was necessary to prove the balance of the day of the examination, and in order to prove that balance it was necessary also to include items in transit in that proof.

By the Court: Q. Well, the examining committee knew about that, did they not, they knew there were items in transit? A. They were there on the books.

By the Court: Q. They were there on the books, they knew they were in transit, then why would they ask the depositing bank for a statement, only of checks as they appeared on the particular day? It seems to me that the very question would suggest that the method was wrong. A. Well, that is the method that has been used.

By the Court: Q. Do you mean to say they always inquired as to the balance in the depositing bank as of the day when they made their examination and never did anything more? A. Not to my knowledge, except to prove up the balance of that day as it appeared on our books.

The Court: I wanted to be sure I had the right idea about it.

Mr. Hinds: That is as we charge it in the bill of complaint, your Honor, precisely.

Mr. Stiefel: May I ask where you charge that?

Mr. Hinds: One place where we charge it—and I think there are several—is page 27, where we say, "Upwards of $50,000 reported to be in transit for deposit in correspondent banks, was wholly non-existent, as the said examining committee might easily have discovered upon later inquiry from said correspondent banks, which inquiry it was their natural and reasonable duty to make." That is one instance and I think there are others.

Q. Will you tell us whether on the occasion of any of the examinations by committees you learned that they would arrive for an examination before they actually did arrive? A. I overheard at different times when the committee was coming; at one time the bookkeeper of one of the examining committee called up and notified me that he would not be there at the examination; that is how I got it, about the time of the examination, about three o'clock that afternoon.

Q. Well, what was the longest period ahead of time that you learned of any examination? A. Oh, I don't remember that, usually on the day, the preceding day or the same day.

Q. Did it ever occur that you learned of it on the day before the examination? A. I don't remember any specific time. I will say this, that I didn't know at all times that the committee were coming.

Q. Now can you from your recollection give us any general statement as to the condition of the Trust Company's account in the Union National Bank during the latter part of 1912 and 1913, both actually and with respect to what was shown on the general ledger? A. Not without referring to the book, no.

Q. Can you recall that condition concerning the Irving National Bank in 1913? A. I recall that the Irving National and Union both were—balances were more or less false balances.

Q. And what was the actual condition, as to the approximate amount of actual balances, say in the Irving, during the year 1913? A. What do you mean, I don't quite get you.

Q. I am trying to find out whether it was over-

drawn, whether it was down low or whether it was up in the twenty or thirty thousand dollars; I am now referring to the actual balance as distinguished from the reported balance? A. The actual balances in both cases was low.

Q. What do you mean by low? A. Small.

By the Court: Q. Under what figure? A. Well, in the Union National Bank we always had a balance as a rule of at least twenty or thirty thousand dollars, because they never handled our exchanges for us; but the Irving National Bank the balances varied there also, but it wasn't as much as in the Union.

Q. Was it ever overdrawn in the Irving National? A. I believe it was.

Q. Was it in the Union? A. They were overdrawn I think toward the end of July, 1913.

Q. Well, now, what were the circumstances under which you discontinued your account with the Irving National? A. Mr. Ward, the cashier of the Irving National Bank asked me to close the account.

Q. Did he state any reasons? A. He said that in view of the fact that we had a loan at the Irving National Bank and were not keeping a satisfactory balance that he would rather have us close out the account.

Q. Did that as far as you know come to the knowledge of any of the directors or other officers? A. I remember the matter of the Irving National Bank was talked of in the committee, but I cannot remember just what was said.

Q. Was their any complaint ever made about the condition of the Trust Company's account with the Union National Bank?

Judge Collins: Made by whom?

Q. Made by the Union National Bank or its officers? A. To me?

Q. To anyone to your knowledge? A. Yes, sir, Mr. Pierson of the Union National Bank used to call me up occasionally after the exchanges had been paid in the morning and would say that our account was overdrawn.

Q. Did the unsatisfactory condition of the Trust Company's account in the Union National Bank over come to the knowledge of any of the directors, so far as you know?

Mr. Congleton: I object, he hasn't said there was any complaint made that that account was unsatisfactory.

The Court: I do not see any objection to the question.

Mr. Congleton: He has put in the word "unsatisfactory, unsatisfactory condition" and no one has used that.

The Court: Is not that an unsatisfactory condition if the account is overdrawn?

Mr. Congleton: That happens all the time with corresponding banks and they call up.

The Court: No, I do not think it does, I am not at all disposed to acquiese in that view, I may change my mind later, but I think the normal situation is that the account is not overdrawn, and it is entirely abnormal if it is overdrawn.

Mr. Congleton: Here is a bank that is acting as their exchange, and he says that he kept twenty or thirty thousand dollars there.

The Court: Well, for the purpose of avoiding all objection I would suggest to counsel that he use the word "overdrawn" instead of "unsatisfactory."

Q. Thus amended can you answer that question, as to whether that condition, or any other unsatisfactory condition came to the knowledge of the directors with respect to the Union National Bank?

Mr. Congleton: The question is in the same form.

Mr. Hinds: No, I have tried to comply with Mr. Congleton's suggestion by not putting it in the witness's mouth that the condition was unsatisfactory.

The Court: The question is whether or not you told any of the directors that Mr. Pierson had told you that the account was overdrawn. That is what you want.

Mr. Hinds: Well that is part of it.

A. I have a recollection of Mr. Fairlie having said something about the Union National Bank balance being overdrawn, Mr. Sheerer I believe had spoken to him about it at the board meeting of the Franklin Savings Institution.

Q. Was that discussed at any meeting of the executive committee? A. This was at an executive committee meeting; I don't say it was during the meeting, it was on the same day of the meeting, and it might have been before the meeting.

Q. Were there more than you and Mr. Fairlie present of the executive committee?

Mr. German: I object to that question in that form.

Q. Who were present? A. I couldn't say that, I don't remember; there were more than the two of us present.

Q. Now I call your attention to the fact that the minutes record the declaration of dividends from time to time; were all the dividends which were declared paid? A. Yes, sir, as far as I know.

Q. Was any investigation made by the executive committee as to the true condition of the Trust Company at the time or immediately prior to the declaration of dividends, other than what is shown on the minutes?

Mr. German: I object. I think the question ought to be what investigation was made by any of the directors at the time of the declaration of these dividends.

tigation being made? Do you know of any investigation being made? If he says yes, then your question can be asked.

A. I don't know of any investigation, no, sir.

Q. I will ask you the same question as to any of the directors, other than those on the executive committee? A. You mean investigation as to whether we were able to declare a dividend or not?

By the Court: Q. Whether your earnings had been sufficient to enable you to declare a dividend? A. I remember of no investigation in that line at all.

By the Court: Q. How did they come to declare it; it must have been declared at a board meeting? A. It was, your Honor.

By the Court: Q. Well, tell us what happened at the board meeting at the time of the declaration of the dividend?

Mr. German: May I just interrupt for a moment. The minutes show that the executive committee recommended the payment of all dividends, and acting on the recommendation of the executive committee the board concurred in the recommendation that appears by the minutes.

By the Court: Now I want the witness to state what occurred in reference to the payment of these dividends, either at an executive committee meeting or at a board meeting? A. Why, your Honor, the minutes tell just what happened; I have a recollection of what happened.

By the Court: Q. Well, have you any recollection in addition to what is contained in the minutes? A. Only this, and that is, that in view of the fact that our surplus or profits had grown to a sufficient proportion to warrant paying a dividend, a dividend was declared.

Q. In the years 1912 and 1913 was there in fact at any time when a dividend was declared an actual surplus wherefrom a dividend could be paid?

Mr. German: object to that question unless it includes as appears from the books.

The Court: The books are shown to have been incorrect. This witness knew all about it. It is necessary to show first there was no surplus, and then it is necessary to show some other things; the very foundation of the whole subject matter is the fact that there was no surplus.

Q. (Question read). A. That would be a very hard thing for me to answer, in view of the fact that there were a great many vouchers that had been irregularly paid and were represented by

fictitious amounts on the ledger, the general ledger, which vouchers it would be a hard matter to tell whether they would be made good or not at that time.

By the Court: Q. Well, they could only be made good out of the assets of the company. A. Oh, I don't think so, your Honor.

By the Court: Q. For instance, that check that you signed for a depositor in the savings bank account, how could that check be made good except out of the assets of the company? A. Well, that is only one check out of a good many.

By the Court: Q. Well, I say that could not be made good, could it? A. Not through the depositor, no, but there were lots of checks of depositors which were irregularly paid and which represented a good many thousands of dollars.

By the Court: Q. Well, those checks were of doubtful value? A. Yes, sir, they were.

Q. From your present knowledge of the solvency of the makers of those irregular checks, whose payment you say had been covered up by fictitious items, can you say whether or not there was at the time of the declaration of any dividend in the year 1912 or 1913 an actual surplus out of which dividends could be paid?

Mr. German: Objected to.

The Court: I will overrule that question I will assume of course that any paper that was not in fact paid at the time when the company failed was worthless. I will assume that until the contrary is proved, I mean paper that ought to have been paid and that was not paid. Now you may ask him whether deducting that kind of paper there would have been a surplus.

Q. I will ask you precisely what his Honor has just suggested; will you answer that? A. Why, if all of that kind had been deducted we wouldn't have had surplus to pay any dividends.

Q. And if the general ledger had accurately set forth the condition of the books of the bank would there then have been any surplus shown even on the general ledger during the years 1912 or 1913? A. Not during 1913, no.

Q. Well, as to the last half of 1912? A. Well, I should say the latter part of 1912, no.

Q. And when you say in all of these recent questions no surplus do you mean also no undivided profits? A. Well, I was speaking more of profits then than surplus, I meant profits.

Q. What about the surplus during those periods?

The Court: In the first place let us get a definition of surplus.

Q. What do you mean by surplus and what do you mean by undivided profits? A. Well, the surplus in our institution was made up of, I think the surplus fund was fifty thousand dollars and it was subscribed, the stock was sold at one hundred and fifty originally, and one hundred thousand dollars went into the capital stock and fifty thousand dollars surplus.

By the Court: Q. Do you mean that the stock was sold at one hundred and fifty? A. Yes, sir, par value one hundred and sold at one hundred and fifty.

Q. Well, as the term surplus and undivided profits appear on the general ledger they constitute—

The Court: He has not defined undivided profits yet. He has told you what surplus, according to his understanding, was; surplus was the difference between the actual value of the stock and the par value of the stock at the time of the founding of the institution, according to his understanding of it. Now let us find out what he means by undivided profits.

A. Well, I am speaking only, your Honor, from our own institution.

By the Court: Q. That is what I say, what do you mean by undivided profits in connection with your own institution? A. Undivided profits are earnings of the institution.

By the Court: Q. Net earnings you mean? A. Net earnings, yes.

Mr. German: It wouldn't be net earnings; it would be net earnings undistributed probably.

The Court: He means of course net earnings that have not as yet been disposed of in any way.

Q. Now Mr. Smith, taking the general ledger balances on any given date, it is a fact, is it not, that the amount of surplus and the amount of undivided profits taken together would represent the difference between the actual assets of the bank and its liabilities, including its capital stock, if the general ledger were in balances? A. Yes.

Q. Did that excess exist during the year 1913, assuming that the books of the bank had been correctly written up in the general ledger? A. That is a matter of bookkeeping a whole lot, it would depend on whether if those checks were charged

up in the individual ledger whether the overdrafts were charged off to profit and loss account.

Q. I am no referring only to the condition actually shown on the books of the bank and I am not referring to irregular vouchers or anything else. If the other books of the bank, other than the general ledger, had been correctly extended into the general ledger would this excess of assets over liabilities, and the liabilities included capital stock which you have described as surplus and undivided profits, would that excess have existed on the general ledger during the year 1913? A. No, not part of the year anyhow it wouldn't have.

Mr. Hinds: This will be a matter of precise demonstration from the books. I wanted to bring it out from this witness's reclection.

Q. Now will you tell us the practice during the latter part of the year 1912 and the year 1913 with respect to your handling of the account in Albany, what use you made out of it, the National State Bank of Albany? A. The New York State National Bank of Albany was a drawing account used almost entirely as a transfer from New York State to New York City or to the H. B. Claflin Company.

Q. Did you ever use that account as a means of obtaining what was actually a loan for the benefit of the Trust Company in the guise of an exchange of Claflin checks? A. No, not to my knowledge.

The Court: You mean that Claflin & Company had an account there?

Mr. Hinds: Yes, your Honor.

The Court: Claflin & Company had an account in the Albany bank, did they?

A. No, sir, I think not, your Honor, we used to give drafts.

Judge Collins: The Roseville Trust Company had the account in the Albany bank.

The Court: I understand that, but I ask whether Claflin had.

Judge Collins: No, Claflin had an account in the Roseville Trust Company.

The Court: I do not quite see yet what the object of making the Albany bank a depository was.

Mr. Clark: We will bring that out a little later.

Q. Did you ever go to Mr. Odell in order to get immediate funds for the Trust Company? A. I have been to Mr. Odell to get New York funds for the Trust Company.

Q. And in what form did you get those from Mr. Odell? A. Form of a check, H. B. Chaflin & Company's usually.

Q. Drawn on what bank? A. On some bank in New York, I can't tell you which bank.

Q. What did you do on those occasions with that check? A. Deposited it in our bank in New York usually, or else in the Union National of Newark.

Q. Did it ever occur that your bank account in Albany was overdrawn? A. It did once I believe.

Q. And what steps did you take then, what occurred? A. I went over to New York to Mr. Odell and got a draft, I got New York funds to cover it.

Q. How did you know that the account was overdrawn? A. In a telephone message from the Albany bank.

Q. What was it? A. I didn't take the message.

Q. Who did? A. Mr. Jennings I believe.

Q. Did Mr. Jennings to your knowledge communicate that message to anyone else besides yourself? A. I do not remember.

Q. Did Mr. Odell state to you when you told him about it whether or not he heard of the message before then? A. I don't remember that either.

Q. Did it ever occur that a check given by the Roseville Trust Company to Chaflin & Company in connection with its business was held by Chaflin & Company for a day or so before being used by them at your request?

Mr. German: Now is that material whether it was or not?

The Court: I think so; it is the irregularities, I take it, in this case; a single irregularity might have been overlooked, but when it comes to a multitude of irregularities why then it seems to me that they might be so numerous that we must infer that some of them at least came to the knowledge of the directors.

Mr. Stiefel: This question is directed to what Claflin & Company did, the request was directed to them.

The Court: I think the question is proper.

Q. (Question read) A. A check on one of our corresponding banks?

Q. Yes. A. Yes, that arrangement was made when Mr. Odell first opened the account; the nature of the deposits that they sent us was such that it took several days for us to collect the checks that they sent us, and I would in turn

give Mr. Odell drafts on Albany, New York or other places which he could use after a few days when these items had been collected; that was the arrangement originally made with Claflin & Company, with Mr. Odell.

Q. Now in the year 1913 did it ever occur—

The Court: Well, what was the harm in that?

Q. None, your Honor. My next question will bring it out. Did it ever occur that the Roseville Trust Company gave Claflin & Company a check of even amount which did not represent the aggregate of exchanges such as you have just spoken of? A. Well, none of these checks represented exactly the amount that they deposited. I do not quite understand what you mean by that.

Q. I show you number of checks, all of which purport to be drawn by the Roseville Trust Company on its depository the Mutual Alliance Trust Company of New York City, all in the even ten thousand dollars, and ask you if you can recall for what purposes those checks were given by you to Claflin & Company, and in order that you may refresh your recollection I show you copies of letters from the records of the Trust Company?

Mr. German: I object to these remarks about showing him papers for the purpose of refreshing his recollection because the witness may not need them, and until he says that he cannot tell without having his memory refreshed I think it is highly improper to show him anything of that kind.

The Court: They are the records of the company.

Mr. German: But the witness might not need refreshing his recollection.

The Court: That does not make any difference. If he does not want to see them and can speak without seeing them he can say so.

A. I would rather refresh my recollection.

Q. Well, you may refresh your recollection and tell us then, if you can, what the purpose of those checks was?

Mr. Hinds: While he is refreshing his recollection I will say that there are two checks for $5,000 and two for $10,000 that I have handed the witness, all in the year 1913.

Judge Collins: What date?

Mr. Hinds: Two are in August and two are in July, two on August 2d, and one on July 31st. and another on July 24th.

Mr. German: And the bank closed what date?

Mr. Clark: The fourteenth of August.

Q. Now can you answer?

(Question read.)

A. The purpose of these checks?

Q. Yes, the ones you have just looked at? A. Well, evidently from the letters they were given in exchange for New York exchange.

Q. And those checks were not the sort of checks that you referred to previously as being given pursuant to the original arrangement between your bank and Claflin Company, were they? A. I don't think so.

Q. Now as to any of those checks, did Claflin & Company hold them for a few days before using them? A. Yes, sir.

Q. Now in effect the transactions represented

by those checks constituted loans from Claflin & Company to the Roseville Trust Company, didn't they? A. No, I wouldn't say so, not loans.

Q. How would you describe the transaction in effect, as distinguished from the former? A. Well, I didn't want to draw our balance down too low in New York, and I gave him these checks to use the day or two after they were issued.

Mr. Hinds: I offer these four checks in evidence, and I am perfectly willing to have these copied, or else received in evidence if any of the counsel want to have them.

Mr. German: It is understood of course that these checks are admitted in evidence but do not bind any directors unless they had notice of them.

Marked Exhibits C-187, C-188, C-189 and C-190.

Q. Can you say whether or not these transactions with Claflin & Company or similar ones were brought to the attention of any of the directors, so far as you know, other than Mr. Odell and yourself? A. Not to my knowledge, no, sir.

Q. Now you have said that the Trust Company did not borrow money from Chaflin & Company; in order to refresh your recollection I show you what purports to be a copy of a letter of March 20, 1913 from yourself to Mr. Odell, taken from the Trust Company's files, and ask you if you desire to correct your testimony? A. No, I do not, not on this; I can explain this if you wish it explained.

Q. Yes. A. In the spring of 1913 money was very tight all over, and Mr. Odell made a personal deposit of $30,000 I think it was, and Mr. Fair-

lie of the executive committee, I think, said owing to the high money rates at the present time it was only fair that we pay Mr. Odell six per cent on his deposit while it was there.

Q. Now was that transaction brought to the attention of any of the other directors? A. It was talked of in the executive committee meeting, as I remember it, this one transaction.

Q. When was that meeting, as you recall, with respect to the date of the March twentieth letter from which you have refreshed your recollection? A. Why I think it was about that time.

Mr. Hinds: I am perfectly willing to have that letter also received and marked in evidence if any gentleman wishes.

Mr. Fairlie: Counsel has refused to let me examine any of these letters; may I do so at this time?

Mr. Clark: That is an absolutely incorrect statement, if the Court please, we are still actively using the letter and I told Mr. Fairlie he could have all the letters afterwards, which would be long before the cross-examination would be reached.

The Court: Well, counsel has just made an offer, and you will have to follow up that offer by showing the papers.

Mr. Clark: Yes; it just happened that at the time we were still engaged in the collection of these letters for this very question.

The Court: Well, just show these letters to Mr. Fairlie.

Mr. Fairlie: The other letters, I want to see those.

Mr. Clark: As soon as we get these checks

put back on the respective letters you can have all of them to look at.

Mr. Stiefel: What is the position of the letters now. An offer has been made if counsel wishes.

Mr. Hinds: You may have them marked for identification or in evidence, or you may do neither, but have full opportunity to inspect them. One of the accountant's is now attaching the appropriate checks to them so that they won't be mixed up.

Q. Now Mr. Smith, yesterday you testified respecting a check of Mr. Dunn which was included on a list which you read.

Judge Collins: Two checks.

Q. Maybe there were two checks, they were called checks.

Mr. Clark: This is for the purpose of clearing this matter up.

Q. Now do you desire to correct your testimony and, if so, kindly do it, and tell us how it came that testified as you did?

Judge Collins: I object to that.

The Court: If there is any addition to the testimony, or any correction of it it can be made now by Mr. Smith. Put your question again.

Q. Yesterday you testified respecting certain checks of Mr. Dunn; have you any explanation?

The Court: Have you anything further to say about it? A. Why I was asked to read the items on this statement, and Mr. Dunn's name appeared on the statement to the amount of four thousand and odd dollars, which was supposed to be checks of Mr. Dunn, but my recollection is that

Mr. Dunn's checks were all taken care of, always, when they were presented, and that amount should not be included on that list.

Q. Were those checks in box 55 at the time the bank closed? A. I think it was a memorandum, a charge slip, or something.

Q. Was Mr. Dunn's account manipulated on the ledgers? A. It was manipulated at times; Mr. Dunn had a very good account with the Roseville Trust Company most always.

Q. Did it occur that credits on his account were delayed in being made after the time they should have been made? A. I don't remember just how the account was manipulated, but I know it was manipulated at times.

Q. Now have you anything to add to your testimony of yesterday respecting the Bellows checks which were included in the list? A. Well, the Bellows checks were really good at the time they were presented. Mr. Charles A Nones gave Mr. Bellows a check on the Roseville Trust Company, as I remember it, for thirty-five hundred dollars.

Q. When? A. I cannot remember just when, I think it was May, 1913 or thereabouts, April perhaps, and Mr. Bellows had the check certified and it was sent out here, or Mr. Nones had the check certified before he sent it to Mr. Bellows.

Q. May I interrupt to ask whether that is the same Nones?

The Court: Let the witness go on.

A. And then Mr. Bellows came out and opened an account with the Roseville Trust Company with this very same check. During the course of the same day Mr. Nones called me up and wanted to know if I had seen Mr. Bellows and if he opened

an account, and he said "You can thank me for that, for sending him out there to open the account," but before he got through talking he said "Smith, can you let me have a little money;" I said "I cannot;" "Well" he said "you got $3500 there for Bellows; he isn't going to use that money; don't charge that check up yet, hold it out for a few days and I can use the money in the meantime, and by the time Bellows wants to use it I will have it." I allowed Mr. Nones to draw against his account without charging up the thirty-five hundred dollar check, and in the meantime Mr. Bellows began to draw checks, and these checks on that list were some of those he had drawn against this unopened account.

Q. This check that Bellows used was drawn on another bank, was it not? A. No, the check that Bellows used was on the Roseville Trust Company, Charles A. Nones' own check.

Q. Was that the same Nones concerning which the Department wrote to the directors in May, 1909? A. Yes, sir.

Q. Will you tell us what you recall of the way that the bills purchased were handled in the Roseville Trust Company both as to the regular manner of handling them and as to any frequent irregularities, if there were such? A. The regular way of handling notes or bills purchased was to charge a note when purchased for its face amount and credit the customer, whether maker or endorser, with the proceeds, that is, the face of the note less the discount or interest, and credit interest account with the interest.

By the Court: How did that method of procedure differ from the method of procedure in

banks of discount and deposit when a man wanted to have his note discounted? A. The same method of procedure was used in all banks that I know anything about, your Honor, as I have described.

By the Court: Well then, the term bills purchased was a term that was used by this bank to indicate the same kind of transaction that any bank of discount and deposit would have termed a discount? A. Exactly; the Trust Companies are not allowed to discount notes, they purchase them instead.

By the Court: Q. They are not allowed to discount them, but if they do discount them why they cannot get rid of the effect of that discount by calling the transaction a purchase? A. Well, your Honor—

The Court: I do not know how far that is going to affect this case; of course I shall hear argument on the right of a Trust Company to discount paper; it may have the right, I do not say it has not, but I say that this particular Trust Company appears to have mis-named the transaction.

Judge Collins: All Trust Companies, they all do.

The Court: It does not follow that because they call it by a wrong name that therefore the transaction itself was wrong.

Judge Collins: Well, your Honor spoke of it as this company only.

The Court: Well, I have not heard any evidence about other companies, judicially I know nothing about other companies. I merely say that I have to test this transaction by the law; if the law allows discount

why these discounts were proper; if the law does not allow discount, if it only allows Trust Companies to purchase commercial paper in the way in which the legislature understood the word purchase, why that is a different thing; I will hear argument on that point. I am trying to find out whether this account which was an account apparently of bills purchased was anything more than the ordinary transaction of the discount of commercial paper, and the witness says that it was not.

A. I mean to say, your Honor, that when we first started in business every note that was purchased we gave a treasurer's check for, that is for the proceeds of the note, and that continued the practice for I should say two years, each and every note that was purchased there was a check given to show the purchase until Mr. Hardin, of the banking department, made his examination at one time, and he called my attention to it and said "Do you make out treasurer's checks for every note that you purchase" and I said "Yes, we have always done it;" "Well" he said " that is foolish, that is not necessary at all," and he advised me to use my bills purchased book and enter therein all the purchased paper and let the bookkeeper enter from that book into his ledger, just as they do in National banks, the various proceeds to the various customers credits.

Q. Mr. Smith, is it a fact or isn't it a fact that the paper which you either purchased or discounted was in almost every instance the paper of a person who was required to have a deposit in that bank? A. Most all cases, yes.

Q. Now these borrowings that the Trust Company made from other banks, were they deman loans or were they time loans or were they some of each? A. You mean bills payable?

Q. Yes. A. They were demand, as I remember it.

Q. Now coming back to the so-called bills purchased; was there in any book of the bank kept a total of the bills purchased, other than the general ledger? A. I think not, no.

Q. Now you have told us of the regular practice in the Trust companies, and I call your attention to the notes, for example, of the Home Ice & Products Company; were there any of those notes or bills which were purchased or discounted and whose amounts were not reflected in the total, shown in the general ledger? A. I think there was but I cannot tell you the amounts.

Q. Is that also true of some of Miele & Bruno's paper? A. Yes.

Q. Any others? A. Yes, there were others but I couldn't tell you who they were, the amounts.

Q. Were there any of W. C. Armstrong? A. Yes.

Q. Now will you tell us what your practice was with respect to such notes or bills whose amount was not included in the aggregate in the general ledger?

The Court: Did he not go over that yesterday?

Mr. Hinds: I do not recall that he did, I think he referred to the checks and we were diverted from that matter.

The Court: Well, if he didn't go over it—did you testify about this yesterday? A. I don't remember just this very question, your Honor.

The Court: Then you may answer it.

A. The method used did you say?

Q. (Question read). A. I don't quite understand that question.

Q. Well, what footing operations were performed in connection with the discount of notes, the amounts of which did not go into the general ledger under bills purchased? A. There were no entries made for such notes at all.

Q. The funds of the Trust Company went out when the bill was purchased or discounted, didn't they? A. No, not necessarily.

Q. What was the operation? A. Well, I couldn't tell you exactly what the operation was, but I know some instances where notes were left at the institution and were never credited or cashed, and the customer leaving the notes would often draw against them, and his checks would come in and be paid or would be honored.

By the Court: If he had an account? A. Yes, had a ledger account, but these transactions did not appear on the ledger account.

Q. How would the item of bills purchased in the general ledger be proved or verified? A. By the listing up of all the notes that were regularly filed in the safe.

Q. If such proof were made in the way that you described it would not take into account the notes which were not entered in the ledger or other books; is that correct? A. That is correct.

Q. While you were in the Trust Company did any member of the executive committee ever inquire of you or make any investigation with a view to determining whether the available funds of the Trust Company were or were not below fifteen per cent of its immediate demand liabilities?

Mr. German: I object because it has not appeared yet that any director or officer knew they were below, in fact they all contradicted that. Now what is the use of this inquiry?

Q. (Question read)

The Court: I do not see any objection to that.

A. Why, I think at every meeting, almost every meeting of the executive committee the general reserve was always figured or investigated so far as the figures were concerned on the statements.

Q. Well, was the subject discussed as such? A. Yes, once in a while the matter would come up that our reserve was high or we had more money than we needed and then other times we didn't have any money to spare.

Q. Did any of the executive committee to your knowledge go further than a mere reading of the report at the executive committee in making such inquiry or investigation? A. Not to my knowledge, no.

Q. Did any director? A. I do not recollect of any at any time.

Q. Or any member of the executive committee go any further than the mere reports, with a view to determining whether the cash was less than three per cent of the immediate demand liabilities? A. Not to my knowledge.

Q. Or any director? A. No, sir.

Q. Do you recall any instances where Mr. Foster's checks came back or were sent back by the Trust Company? A. Yes, I recall one instance.

Q. Tell us about that? A. Of a small check having been sent back by the teller, that is, having been returned.

Q. What were the circumstances? A. Why the teller returned the check because it didn't appear good on the ledger, as I remember it.

Q. Did the ledger correctly state Mr. Foster's account? A. As far as I know, yes.

Q. What did Mr. Foster do? A. Mr. Foster spoke to me about it when he found out the check had been returned.

Q. What did he say? A. He asked me to have the check recalled, and I cannot remember everything he said, I know that he was very much put out about it because a small check of his had been returned.

Q. Do you remember to whom the check was payable, or what sort of person or concern? A. It was payable to somebody up in Connecticut where his folks were during the summer, as I remember.

Q. Do you recall the instance of Mr. Bierman's note having been called to his attention as not having been paid? Testimony was given the other day as to Mr. Bierman having a request made to pay his note when he had actually paid it; have you any recollection of that matter? A. I have a faint recollection of it.

Q. What is your recollection? A. The matter was brought to my attention, I have forgotten by whom now, but my recollection is that I looked up the matter and found that Mr. Bierman had given a check for five hundred dollars or some such amount to the paying teller and the check had been used; I never had seen the check before to my knowledge.

Q. Did you have any conversation with Mr. Foster?

The Court: The check had been used? What do you mean? A. The check had been cashed by the paying teller in his office.

Q. Did you have any conversation with Mr. Foster about that after you returned to the bank? A. I don't remember of any conversation with Mr. Foster, it may have been with Mr. Foster.

Q. Do you recall whether or not Mr. Foster inquired from you about the matter after your return? A. No, I do not, but I do know that I had a talk with Mr. Bierman about it and I told Mr. Bierman that I thought he must have been mistaken, that he must have drawn the money, instead of paying the note he must have drawn the money on that check.

Q. What other business concerns were you interested in while in the Roseville Trust Company? A. Oakland Motor Sales Company; Home Ice & Products Company; I was a director in the Intercity Land and Securities company.

Q. What was your connection with the Oakland Motor Sales? A. I was owner and proprietor of it.

Q. What was your connection with the Home, Ice & Products Company? A. I was president and treasurer I think at that time, at the time the bank closed.

Q. Were you a stockholder? A. Yes, sir.

Q. Were any of the other directors stockholders or otherwise interested? A. Mr. Munroe was at one time a stockholder.

Q. What was your connection with the Intercity Land & Securities Company? A. Only a director, that is all.

Q. Stockholder? A. I don't remember having the certificate.

Q. Do you remember what the present condition of that company is? A. Only from hearsay, that is all.

Q. Now what do you know of that company's condition as a director thereof? A. I don't know anything as a director thereof, other than I knew before the bank closed.

Q. And what was that? A. That they were in business in New York buying and selling real estate.

Q. Do you know whether they still have any of that real estate?

The Court: That does not make any difference. If he knows whether the company has suspended business he can testify to that.

Q. Do you know whether they have or have not suspended business? A. I have been told that they have suspended.

By the Court: Q. Do you know yourself? A. I don't know personally, no.

Q. Who is the president of the Intercity Land & Securities Company? A. Who is the president?

Q. Yes. A. I don't know at the present time.

Q. Who was while you were in the Roseville Trust Company? A. John B. Faunce I think.

Q. What officer was Mr. Clarence P. Whitman? A. Secretary and treasurer I think.

Q. If your Honor please, we overlooked proof as to one of the pass book irregularities. I show you the pass book purporting to be that of Jacob or Christina Dorer, No. 1955; do you recognize it as such? A. Yes, sir.

Q. Do you find a deposit there of March 1, 1912? A. No, I do not, not on that date.

Q. Look at the next page. Do you find a deposit in that pass book of September 25, 1911? A. I do.

Q. How much? A. $2830.

Q. Was that money deposited by that depositor? A. Yes, sir.

Q. I show you the account of that deposit No. 1955 in the savings department ledger, Exhibit C-111, and ask you whether you find that deposit entered on that date in that book? A. No, sir, I do not.

Q. Do you find any amount on that date? A. No, sir.

Q. Can you tell us what became of that deposit? A. I don't remember now.

Mr. Hinds: I offer that pass book in evidence.

Marked Exhibit C-191.

Mr. Stiefel: I do not want to continually object, but I think I ought to object to that, and if your Honor will hear me for a moment I will state why. This involves a concealed item of loss or a concealed abstraction of funds. The directors could not have known of this, nor is it charged that they knew of this particular transaction. This is part of the impropriety which is charged against the directors who are directly involved. As far as my client and the great majority of the defendants here is concerned there is no direct charge with regard to that, there is no proof of any loss by the bank by reason of this transaction; it cannot be claimed that an examination of the books, or a consideration by them at the

opening in connection with the Nones affairs or any other matter upon which possible negligence may be predicated, would have led them to discover this incident.

The Court: Why could not they have sent for this book, that would have enabled them to discover it.

Mr. Stiefel: I do not see how they could send for a book of which they didn't know.

The Court: There is an account here.

Mr. Stiefel: No, there is no account here.

Mr. Hinds: Yes, there is an account here in the ledger.

The Court: You see it stands on the same footing as the other exactly.

Mr. Stiefel: Then your Honor takes the view that their failure to call in the pass books was an element of negligence.

The Court: I suppose that will be one of the contentions in the case.

Mr. Stiefel: Well, I didn't anticipate that when I started my argument.

The Court: I will admit the book in evidence as I admitted the other similar books in evidence; what its effect will be I cannot tell.

Mr. Clark: I want to on the record state that the information which came from Mr. Smith yesterday to the effect that a six thousand dollar note had been taken by him in connection with the Felix Cardone deposit account was the first information that we had with reference to that phase of the transaction, and we discovered after Court that some time after the bank closed that

note of Cardone's was collected; having discovered that we wish to make that statement on the record, and to state that the item in Exhibit E on page 58, May 4, 1911, F. Cardone $6,000 is in the light of that information withdrawn.

The Court: I do not suppose anybody will object to that.

Q. While you were connected with the Roseville Trust Company was your general ledger ever supervised or checked up while you were keeping it by any director except in connection with the committee's examinations? A. I would have to examine the minutes and the ledger as well for that.

Q. According to the practice as it obtained in the Roseville Trust Company did any of the other employes of the Trust Company supervise or verify the figures in the general ledger when it was kept by you? A. What do you mean by figures in the general ledger, all figures, every account.

Q. Did they ever verify the balances in the general ledger? A. Some of them.

Q. Was it their practice to verify the general ledger daily trial balance as a whole? A. No; that is not the practice in any institution that I know of.

Q. In the institutions that you know of is it the practice for the chief executive officer to be in exclusive charge of the general ledger? A. No, it is not.

Q. While you were in the Trust Company who signed the checks on the depository banks? A. I did for the most part, Mr. Odell and Mr. Foster I think.

Q. And according to the practice in the Trust

Company were reconcilements made of the accounts in the depository banks at intervals? A. At intervals, yes.

Q. Who made them? A. I made them at times and Mr. Jennings other times.

Q. At the times you made them did any other person in any way connected with the Trust Company also make them, with the exception of examining committee times, if such was the case? A. I don't think so.

Adjourned.

RAYMOND E. SMITH, re-called.

Direct-examination by Mr. Hinds:

Q. I call your attention to the pile of thirty-one check stub books containing checks and drafts pasted in each one properly labeled as a check or draft book in use in the Roseville Trust Company; have you looked at those before the Court convened this morning? A. Yes, sir, I have.

Q. Did you find each and every one of those to be the check stub book or the draft stub book as indicated on this label, and what it purports to be, and the checks and drafts pasted therein authentic? A. Yes, sir.

Mr. Hinds: I offer all those thirty-one books in evidence. Marked as exhibits.

Q. I show you a thick bundle of what purport to be bank statements, each one labeled, and I ask you whether you have examined each and every one of those before the Court convened?

A. Yes, sir, I looked through these this morning.

Q. Did you find each of those to have been what they purport to be on their face and received by you from the banking institutions indicated thereon during the course of business of the Roseville Trust Company? A. Received by the Roseville Trust Company, yes, sir.

Mr. Hinds: I offer these all in evidence. Marked as exhibits.

CROSS-EXAMINATION by Mr. German:

Q. Mr. Smith, where were you born? A. Orange, New Jersey.

Q. Where did you live up to the time of being employed by the Roseville Trust Company? A. I lived in Orange and Caldwell.

Q. And where were you living at the time you were employed there? A. I was living in Orange.

Q. Where were you educated? A. Mostly in Caldwell.

Q. And after leaving school what was your first employment? A. I went in the Orange National Bank.

Q. How old were you then? A. About eighteen.

Q. How long did you stay there? A. I think about six years.

Q. And what were your duties while so employed?

Mr. Hinds: If your Honor please, I object to this as improper cross-examination and utterly immaterial.

The Court: It seems to me to have very little materiality.

Mr. German: The purpose of the cross-examination is to bring out his experience in banking matters.

The Court: No doubt about his experience in banking matters, is there; I assume he was very expert in banking matters.

Q. Where were you employed just before your employment with the Trust Company? A. Where was I employed?

Q. Yes, at that time? A. Second National Bank of Orange.

Q. How long had you been there? A. About seven years.

Q. In what capacity there? A. Assistant cashier.

Mr. Hinds: I object on the same ground.

The Court: I will allow this question to be asked, it may have some relevancy.

A. Assistant cashier of the Second National Bank of Orange.

Q. And had been for how long? A. About five years I think.

Q. What other institutions, if any, were you connected with? A. Orange National Bank and the Second National are the only two institutions I was ever connected with.

Q. I say at that time what institution were you connected with any other than the Second National Bank? A. Any other institution?

Q. Were you a member of any other bodies? A. I was a member of the Common Council in Orange.

Q. And what other bodies, if any? A. What kind of bodies?

Q. Any kind of bodies?

The Court: Were you connected with any other institution of any sort?

Q. Or organization? A. I belonged to one or two clubs, I think the Columbian Club of East Orange, and that is all I guess, as I remember, at that time.

Q. You considered yourself an expert in banking matters, and particularly with the keeping of banking books, did you not? A. I did.

Q. At the time that you were employed by the Roseville Trust Company? A. Yes, sir.

Q. Now the minutes that were offered in evidence in this cause, were they the true report of the proceedings that took place of the directors in the executive committee? A. I think so, yes, sir.

Q. The reports that you submitted to the executive committee and to the directors of the affairs of the bank, on their face appeared to be a true condition of the books of the company, did they not?

Mr. Hinds: I object to that, your Honor, it is simply calling for either an argument or speculation or characterization.

Allowed.

A. I think in most instances the statements I gave to the directors were true copies of the general ledger.

Q. That relates also to the bills purchased; as to the general condition of the bank? A. Yes, sir.

Q. Now Mr. Smith, if you will, tell us briefly just what method was used in making these irregular entries?

The Court: Well, he has been going over all that and has told us to the best of his ability.

Mr. German: I thought if we got it this way, there were four or five or six different items that he has told about by being shown different books and different things, but I thought if we got it right down concisely that it would help us a great deal.

The Court: We could not get it right down, it covers a wide field, and he has gone over the whole matter and he has shown us exactly how these irregularities occurred.

Q. What part, if any, did Mr. Jennings or Mr. Thompson or any other employe have in making the irregular entries? A. I couldn't answer that.

Q. So far as you know? A. Well, to my knowledge the only part that Mr. Thompson had was that of certifying checks irregularly.

Q. And Mr. Jennings, what did he do? A. All I know that Mr. Jennings did was to certify checks that were not good, and to make entries at my request; what other things he did I didn't see him do.

Q. Did you ever report any of these irregularities to any member of the directors? A. No, sir, not that I remember.

Q. Did you ever call the attention of any of the examiners to any of these irregularities when they made examinations? A. I called the attention of Mr. Appleton to one irregularity.

Q. He was one of the bank examiners? A. He was the examiner who had charge of the first few examinations in the Roseville Trust Company representing the State Department.

Q. And to what did you call his attention? A. I called his attention to the Nones matter.

Q. Did you ever call the attention of the examiners to these red ink entries? A. Why no, that was up to the examiners to find that themselves.

Q. Did the bank examiners? A. They have ever reported as to overdrafts, yes, sir.

Q. That was called to their attention by the books and you say they did notice it? A. It wasn't called to their attention.

Q. Well. A. Called to the attention of whom?

Q. The bank examiners? A. Not by me.

Q. Well, did they know about it? A. They wrote about it; they must have known about it.

Q. Would you know when the banking examiners were coming to make an examination? A. Never, no, sir.

Q. What means did you use, if any, to cover up, if you did, any irregularities in the books when the bank examiners came?

Mr. Clark: If your Honor please, we renew our objection to the questions which relate to the examination by the banking department, on the ground first that it is not cross-examination; and second, on the ground that it is not relevant or material, as even if everything which the defendant hoped to establish through that source were brought here it would have no bearing on the question as to whether or not the directors had performed their duty; the nature of the examinations are entirely different, as ever those of us who have only the information which has come out in this case already must see. The members of the examining committee are members of

the company, they are in intimate touch, monthly at any rate, with its affairs, they are charged with an annual duty, they are not limited in point of time as to the amount of work that they shall do, they have far different responsibilities with regard to the character of the paper in the bank, the responsibility of the makers and endorsers, a far different course of knowledge as to those facts. In the case of Campbell vs. Watson, where it appeared that stealings had been going on for four or five years, and that during those four or five years the Banking Department had been making regular examinations, the question came up in that trial, and while there was some testimony allowed in so that the Court might be informed as to the point that it was desired to be brought out, the Court refused to permit any introduction of the examiners reports made by the State Department, and in the course of the very careful opinion has stated that all of that evidence had no bearing in determining the question as to the responsibility of the directors.

The Court: I think the witness may be asked the question whether he made any special effort to conceal the true state of affairs from the bank examiners, and what the effort was.

A. I did at times make entries to cover up things that I did not want the examiners to see, but just what was done and when I can't tell from memory very well.

Q. Well, you remember what you did, do you not, when the examining committee of the bank came? A. Having refreshed my recollection within the last few days I remember some things.

Q. Could you refresh your recollection so far as the bank examiners are concerned? A. I might, I would want to know the date though of the examination.

The Court: The witness is now asked as to his knowledge, and the matter of concealing things from the bank examiners is entirely collateral to this inquiry, and I certainly am not going to waste time finding out how he deceived the bank examiners unless it has some relation to the deception practiced upon the directors.

Mr. Stiefel: I have stated before that at the proper time I want to be heard at length on that, I mean before final argument.

The Court: I will hear you, of course.

Mr. Stiefel: I do not want to by remaining silent be considered as approving of that.

Q. Do you remember what books you refer to as making entries in? A. I think it was the general books.

Q. General ledger, would you say? A. General cash book and general ledger.

Q. What did you do, if anything, in relation to the accounts or the books which had accounts of corresponding banks, in order to hide the true condition from the State Examiners? A. I think that at one time there were entries made that were fictitious at the time of their coming to

the bank, of the examiners coming to the bank.

Q. In what book? A. In the general book, general cash book.

Q. Well, that would relate to these corresponding banks? A. Yes, sir.

Q. What difference did it make to you in making certain entries in connection with the examining committee as to whether you knew the committee were coming or as to whether you didn't know it? A. What difference?

Q. Yes, would it make in your entries? A. In the entries?

Q. Yes. A. I don't think it would make any difference.

Q. And you stated yesterday that it was only at times that you knew when the committee were coming? A .I didn't know they were coming at all times.

Q. You only learned that in an incidental way, you did not learn it direct from the committee of course? A. In one of two instances I did, but I think at one time Mr.—I can't remember who it was but I thought it was Mr. Sexton called up on the 'phone and said that he would be a little late in getting there for the examination.

Q. That was along the early part of the examination before the Examiner objected to that form of procedure, was it not? A. What form of procedure?

Q. As to having the examiners notify the bank employes that they were coming? A. I don't think there was any such objection raised by the Banking Department and it was not a practice.

Q. It was not a practice to do it? A. No, not to my knowledge.

Q. You started to say something yesterday that you did not describe fully, as I recall, that when these checks that were certified or paid, for which there were no funds to meet them, became so large that you did something, or made certain entries so that they couldn't be discovered, other than putting them in the cash account; will you tell us what means you did use? A. I charged them to other accounts, and put them away in box usually.

Q. So far as the books appeared they were perfectly regular, so far as the books appeared?

The Court: What was regular?

Mr. German: Why this charge, that is, there was nothing to detect on the books.

The Court: If nothing was charged on the books I do not quite see how things could be regular or irregular, except in the sense that it was not charged.

Q. Looking at the books there was no way of detecting that irregularity, was there?

The Court: Well, looking at the particular book there was no way of detecting it. I have got to try the question whether or not these directors were negligent in the performance of their duty. Now just how far they ought to have gone in making their examinations is the question to be decided. I can illustrate by a single instance. Ought they or ought they not at different times to have called in the pass books so that they might compare the pass books with the individual ledgers? That is one of those things which it will no doubt be contended by complainants they

ought to have done, and which they did not do, and which had they done would have revealed certain of these irregularities. I say nothing about that, but it is perfectly evident that if that be the contention then a mere inspection of the individual ledgers would reveal nothing; the fact that they looked at the individual ledgers would have been credible to them as far as it went. The question is ought they have compared the balances in the individual ledger with the balances on the pass books; that is one question, and there are various others. The mere fact that they did something either proves or disapproves negligence; the question is whether they did enough. There is no charge that these directors concurred in any fraudulent act; Mr. Foster appears to have concurred in some irregular acts, or, as the witness said yesterday, sanctioned one or two, but outside of that there is no proof as yet that the directors concurred in any fraudulent acts, they did not conspire to defraud the bank.

Mr. Clark: There is one exception to that, and that is John B. Scarlett, a director.

The Court: Well, I have not heard anything about Mr. Scarlett yet.

Mr. Clark: May I recall to your Honor that his name was mentioned.

The Court: Well, I may be mistaken, I am merely illustrating now.

Q. Was it the practice, as far as you know, for the directors of banks in and around Newark

to go behind the cages and examine the books of the concern, particularly the general ledger?

The Court: As far as the witness is personally cognizant of the practice.

A. I do not know.

Q. Did any of your statements to the executive committee of the directors show that the reserves were below the fifteen and three per cent as required by law?

Mr. Hinds: I object, unless it is made to appear what reserves mean; that is not understandable to me, and I do not suppose it is to the witness.

The Court: Do you understand the question?

A. I think I understand it.

By the Court: Q. What do you understand by the word "reserve"? A. The word "reserve" as we used it in the Roseville Trust Company is the fifteen per cent required to be kept in available funds, fifteen per cent of the demand deposits.

The Court: That is the sense in which you term "reserve"?

Mr. German: Yes.

Q. (Question read) A. I do not remember of any.

Q. You of course were not in the bank at all times during the day? A. Not at all times, no.

Q. And you wouldn't say that the other employes in the bank didn't look over the general ledger while you were out? A. I don't know what they did while I was out.

Q. Where was the general ledger kept in the bank? A. It was kept in the safe, in the big

safe when not in use, as a rule, or on top of the desk over the safe.

Q. Accessible to the other employes of the bank? A. Yes, sir.

Q. You made no attempt, did you, to conceal the general ledger or any of the other books? A. No, sir.

Q. While either the examiners were there or the State Examiners? A. No, sir.

Q. Or any other time? A. I did not.

Q. Mr. Fairlie came to the bank very frequently, did he not? A. Yes, sir.

Q. How frequently did he come? A. He stopped in most every morning on his way down town.

Q. How about Mr. Odell? A. Mr. Odell, as a rule, was there every morning for a few minutes.

Q. And Mr. Foster was there frequently too? A. Toward the spring and summer of 1913 Mr. Foster was there as a rule every day for most of the morning.

Q. And during each day were not the directors or some of them in and out of the bank at all times and during different times of the day? A. Each day?

Q. Well—A. Perhaps Mr. Munroe was there more often than any of the rest of them, outside of Mr. Odell and Mr. Fairlie and Mr. Foster.

Q. But as a rule the directors came to the bank frequently, did they not? A. Yes.

CROSS-EXAMINATION by Mr. Stiefel:

Q. When you say came to the bank frequently you do not mean to say they came there to consult with you; they came to the bank to make

deposit, and perhaps say good morning? A. Mr. Odell consulted with me.

Q. Aside from Mr. Odell, Foster, Fairlie and Munroe? A. I think their mission usually was to transact some business with the tellers.

Q. And ask you how things were going on, occasionally? A. Once in a while, yes, sir.

Q. But aside from that the other directors never took upon themselves to come into the bank and interfere with the active management of the bank, except when they came there as members of the examining committees or the like? A. That is all.

Q. In other words, they conducted themselves like ordinary bank directors visiting the bank of which they were directors?

The Court: No, that will not do.

Mr. Stiefel: I am cross-examining, your Honor.

Q. I would like to have the general ledgers that you used yesterday produced here. A. (Produced).

Q. You stated here yesterday that on May 21, 1913 when the committee came there—by the way, did they come there on May 21, 1913? A. It was around that date, I am not sure of the date now, the minutes would show that.

Q. Is that the date of the examination that was testified to?

Mr. Clark: Yes.

Q. On that date when they came there the individual items that were entered in the general ledger under the head of that date were true, as far as the subsidiary books of the bank were concerned; is that right?

The Court: You mean corresponded with; do not say "true."

Q. Corresponded with. A. You mean the entries on the general cash book were the same as those on the ledger?

Q. The general cash book is a subsidiary book, is it not? A. Yes.

Q. And what other subsidiary books are there?

The Court: I should call it a primary book, according to bookkeeping parlance the books of original entry are supposed to be more valuable than the books which merely state the results obtained from the books of original entry; in all legal controversies the books of original entry are considered to be the primary books and the others secondary.

Mr. Stiefel: I used the word subsidiary because it has been constantly used during this examination.

The Court: Well, you better use words accurately.

Q. Then I will use a different word from what other counsel have used. The books of original entry then, as distinguished from the general ledger which contained a summary of these original books, what were those books of original entry, the entries from which passed into the general ledger? A. The books of original entry are, in the first place, the tellers proof books.

Q. Tellers proof books? A. And in the second place the debit and credit cash books of individual accounts, and then the general cash book, both debit and credit.

Q. Is there a separate debit general cash book and a separate—A. No, sir, it is all one book, one side is debit and the other side is credit.

Q. The general cash book so-called? A. Yes, sir.

Q. Those are the books of original entry. Is it not a fact Mr. Smith, that from the debit and credit cash books of the individual customers no entries proceed or are posted into the general ledger? Do you understand my question?

The Court: I understood just the other way all through this examination. Do you mean the items or do you mean aggregates?

Mr. Stiefel: I mean this, your Honor, the general ledger shows that the determination on each day of the aggregate of balances of the customers is determined, not by going to the individual ledger, the individual demand ledger, taking the footings there and then posting that footing to the general ledger, but is determined by taking the debit and credit itms as far as they affect the customers during the course of the day, totaling the debit and taking the debit and credit items as far as general ledger, and making deduction from the previous day's balance, which gives a new balance which is brought down as the balance for that day. That is my understanding of it, and I wanted to bring out that the general demand ledger or the specific demand ledger, the ledger which deals with the general customers accounts, the individual accounts, that there is no posting from that to this general ledger.

The Court: I do not understand what book you refer to.

Mr. Stiefel: The customers ledger.

The Court: There are two books, No. 1 and No. 2, as I understand it.

Mr. Stiefel: Well, they constitute one book in point of law.

The Court: Yes, possibly three, arranged alphabetically, but they are all the same; they have been called throughout this trial individual ledger. Now I do not know of any other.

Mr. Stiefel: I don't know of any other either, but what I am trying to get at is there are no postings from those books to the general ledger, the book which I now hold in my hand.

The Court: No posting of individual items would be in that.

Mr. Stiefel: Well, I am trying to learn the system of bookkeeping, that is what I am trying to get at.

The Court: If I understand it, there is no trouble about it and there does not seem to be any dispute about it on the part of anybody, the individual ledger shows each day the balance standing to the account of the customer. In some cases they show that he did not have any balance standing to his account, that he owed the bank something; the aggregate of the balances, minus the small deductions is put into the general ledger every day, as I understand.

Mr. Stiefel: Well, I just understand it the opposite way, that only twice a month

did they take a footing of the customers ledger in order to check up and see whether the entries which they had been making from day to day during the course of those two weeks corresponded with the entries opposite customers ledger No. 1 and customers ledger No. 2, or individual deposit No. 1 and No. 2.

The Court: Yes, that is the way I understand it, but for all that the entries in the general ledger purported to be aggregates of the individual balances for that particular day. Now they may not correctly represent those balances but they purport to be so. Does anybody have any different idea than that? That is right, is it not?

A. No, sir, your Honor, except in one instance it is right, not the aggregate of balances but the aggregates of both sides of the account were put drawals are put in the general ledger, and the difference is either added to or taken from the balance as carried on the general ledger of the day before, making a new balance for the next day, and at the close of every two weeks the individual ledgers are proved by taking off a list of all the balances and compared with the general ledger balance.

The Court: Well, I was wrong in this respect, I stated that the balances of the individual ledger were put into the general ledger; I ought to have stated that both sides of the account, the aggregates of both sides of the acount were put into the general ledger. In other words, instead of performing the subtraction for each individual depositor, that is subtracting the sum of his de-

posits from the sum of his withdrawals that subtraction was done in the general ledger.

A. Yes, sir, it was done in bulk.

By the Court: Q. Yes, in bulk. A. Yes.

Q. Those entries that you have just mentioned to the Vice Chancellor were entries which were made in the general cash book?

The Court: In the ledger you mean.

Q. In the general cash book; is that right? A. They went in the general cash book as well as the general ledger.

By the Court: Q. What went into the general cash book? A. The total footings of the individual deposits on the one side and the individual withdrawals on the other.

Q. And were they posted from the general cash book to the general ledger, or were they posted from the tellers proof books to the general ledger? A. From the general cash book into the general ledger.

Q. Is it not a fact that outside of stable items, like capital, surplus and profit and loss, which could only be varied by act of the board of directors, the changeable items from day to day were posted from the general cash book to the general ledger? A. No, they were posted as a rule from the items themselves into the general ledger, and from the items themselves into the general cash book, and later on the work was compared from one book to the other.

Q. You spoke of the items themselves, in other words, lists were prepared; is that it? A. Yes; for instance, the credit tickets representing the credits, the postings were made directly from the tickets and the charges that were made—the post-

ings were made from the charges; that was the general course, I mean to state.

Q. So a tabulation was made of these and a footing so arrived at, you footed the column? A. Yes, sir.

Q. And that footing was put into the general cash book and also was frequently put into the general ledger without reference to the general cash book? A. The footing of the general cash book never went into the general ledger, no.

Q. I don't say the footing of the general cash book, but the footing of this tabulation, say of checks that had been received and cashed during the course of the day or honored, that footing which was arrived at was taken and was written into the general cash book and was also written into the general ledger, or did you post from the general cash book to the general ledger? A. No, sir; as a rule the posting was done from the items themselves.

Q. In other words, from the piece of paper on which this was written out? A. Yes, sir.

Q. In other words, the general ledger here is really a book of original entry, is it not? A. Yes, sir, of general work.

Q. And there is no posting from the general cash book to the general ledger? A. Not that I know of, it might have been done occasionally but it wasn't the practice.

By the Court: Q. I do not quite understand what part the tellers proofs played there, I thought that every transaction which had gone through the notes of the teller was entered in te teller's proof book and the teller's proof book would show everything; the teller's proof book

was proved every day, as I understand it? A. Yes, sir.

By the Court: Q. Now you spoke of entries made not from the proof books but from the deposit slips; is that what you mean? A. Yes, sir.

By the Court: Q. Now do I understand that in addition to putting the items shown on the deposit slips into the proof book there was a separate list prepared and the aggregate of that list was transferred to the general ledger without references to the proof books? I do not understand that. A. I think I can tell you, your Honor. The idea of a teller's proof book is for the guidance of the teller and in order for him to have a proof and a record of such proof; the deposit tickets in the receiving teller's proof, for instance, are listed and the footing entered in his proof book, and the list is kept in his book, the entire list.

By the Court: Q. Then it appears in the book itself? A. Yes.

By the Court: Q. And not in a separate paper? A. That is the teller's proof book.

By the Court: Q. I am speaking now of the receiving teller's proof book, we have to keep them apart, the receiving teller's proof book, I understand the amount on the deposit slips is put in the receiving teller's proof book? A. Yes, sir.

By the Court: Q. Is that so? A. Yes, sir.

By the Court: Q. And then the various amounts thus inserted in the proof book day by day are added up day by day? A. Yes, sir.

By the Court: Q. And from that addition there is a transfer into the general ledger; is that it? A. Not from that addition your Honor, no, sir.

By the Court: Q. From what addition? A. It is not transferred from the teller's proof to the general ledger, there is an individual cash book which we call credit cash, wherein all the transactions of the day, that is the credit, individual credits, are listed separately and a footing of those is made and compared with the teller's proof to make sure that they prove, and the total of this cash book is then posted in the general cash book and from there into the general ledger.

By the Court: Q. Would that same process be employed in the case of the paying teller, substantially? A. Except as to credits, the paying teller has no credits, that is, he doesn't take in any individual deposits, they all go through the receiving teller.

By the Court: Q. But he has checks? A. Checks, yes, sir.

By the Court: Q. Now what does he do with the checks? A. He lists his checks on his proof and turns them over to the second teller or the receiving teller, and charges the receiving teller with that amount.

By the Court: Well, he has a book too? A. Yes, sir, he enters them on his book.

By the Court: Q. And the aggregate of the transactions of the day is put where, into what book? A. Into his teller's proof book, the paying teller's proof book.

By the Court: Q. But I say the teller's proof book is added up? A. Yes, sir.

By the Court: Q. Well, now, the sum total goes where? A. The sum total is simply a memorandum for him to balance his cash at night, but the sum total of all the checks that he takes in and

cashes during the day, that are regularly paid, go from his cage to the receiving teller and are again listed by the receiving teller and included in the total of his checks of the day, and he credits the paying teller with the amount that he gets from him.

Q. From the tellers proof books no postings are made to the ledger? A. No, sir.

Q. They are simply books for the use, or primarily for the use of the tellers to enable them to determine whether the amount of cash and representatives of cash which they have on hand is correct? A. Yes, sir, that is right.

Q. And the amount of cash and representatives of cash that they have on hand is put or posted into the general cash book, is it not? A. No, that is not the operation. The general cash as found in the general cash book is the difference between the credit and the debit footings of the general cash book, and the footings of the two cashes, the receiving teller's cash and the paying teller's cash, are supposed to agree with the cash as carried on the general cash book each day.

By the Court: Q. Who puts the items into the general cash book, what officer? A. The bookkeeper.

Q. The item of actual cash as determined from the receiving and paying teller's proof books does appear in the general cash book each day, does it not? A. Yes, sir.

Q. And that figure is determined from those general tellers proof books each day? A. That figure is not arrived at in that way, no.

Q. But it is not put in until the proof of the two tellers proof books has been completed? A. It is usually compared after it is put in.

Q. It is compared after it is put in? A. Yes, sir.

Q. Now on the twenty-first day of May, 1913, when the examining committee arrived there the items which appeared in the general ledger, as it has been offered in evidence, had already been put in by you, hadn't they? A. When they arrived?

Q. Yes. A. In the general ledger?

Q. Yes. A. No, sir.

Q. Were they written in by you during the course of the examination? A. Yes, sir.

By the Court: Q. Why they had to be, it could not be otherwise, if they got there about three o'clock; I suppose the bank closed at three, did it not? A. Yes, it did, your Honor.

By the Court: Q. Well, they got there at three o'clock; the tellers had to wait until all the customers had left the establishment and the bookkeeper had to wait upon the tellers? A. Yes, sir.

By the Court: Q. And Mr. Smith had to wait upon the result of their joint labors, after the closing of bank hours? A. That is it, certainly.

The Court: He could not by any possibility have put these items in his book until after three o'clock.

Mr. Stiefel: I am aware of that, but there was never any testimony that they came at three, there was testimony that they always came later than three.

The Court: Every one of them testified that they came about a quarter after three, I think.

Q. Were any of these entries made in the general ledger on May 21, 1913, when the committee came there? A. Not that I remember at all.

Q. So they were all made during the course of the time that the committee was in the banking house; is that right? A. I believe so, yes, sir.

Q. When they first were entered by you they were set down other than they now appear on the general ledger; isn't that right? A. You are speaking of figures, are you?

Q. I am speaking of figures, yes. A. I can't say that was right.

Q. Didn't you so testify yesterday? A. I spoke of a certain account, as I remember, and I am not sure that it was May, 1913, without looking on the ledger.

Q. You recall speaking of certain items in that day's work, don't you, as having been changed during the course of the examination? A. Yes, I do, I think it was that examination.

Q. When you first set them down you set them down so that the examination that could be made by the committee would not disclose the error, isn't that right? A. In that one account.

Q. That is to say, in the individual deposit account? A. No, I think not.

Q. No? A. I think this was in the demand loan account.

Q. In the demand loan account?

Mr. Clark: Won't you show him the book and that will save time.

Mr. Stiefel: I am conducting this cross-examination.

Q. You set that figure down because you knew they were going to check up the demand loans, did you not? A. Yes, sir.

Q. You knew if they checked it according to that figure they would check it correctly? A. Yes, sir.

Q. Was that figure set down before or after they had completed their work of checking up the loans? A. Which figure do you mean?

Q. The demand loan figure? A. Well, there are two there.

Q. Either one or both, you can answer the question, tell us about that? A. The original figure was placed there before the examination was made.

Q. Was placed there before the examination was made? A. Yes, sir, that is before they were through checking up the demand loans.

Q. Before they were through checking them up. About what time did they finish checking them up ? A. I think about half-past four or five o'clock.

Q. When they came there there was no entry opposite demand loans? A. I think not, not on that day.

Q. When you speak of demand loans do you mean collateral loans, or is there a separate item there? A. I mean collateral loans, yes, sir.

Q. I show you the book. A. As I said, I wasn't sure of the date—yes, that is the item on individual deposits.

Q. Then your testimony with reference to that refers to another examination, your testimony with reference to the change in the demand loans? A. In the collateral loans, yes.

Q. In the collateral loans. Now looking at that book you now are prepared to tell me, I suppose, that the changes were made in individual deposits No. 1 and individual deposits No. 2? A. Yes, sir.

Q. The footings in the debit and credit column under the head individual deposit No. 1 and No. 2

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are shown in the cash book on May 21, 1913, are they not? A. Yes, sir.

Q. Where are they shown, will you please point that out to the Court? A. Where it says credit on one side and debit on the other, A to L, M to Z; A to L, M to Z is not so stipulated on the credit side, but—

Q. But it was so understood? A. Yes, sir.

Q. And were those entries on that particular day which were made by you taken from this cash book, can you tell? A. All the entries on the general ledger you mean, or just the entries on the individual deposits?

Q. The entries on the individual deposits? A. Not all of them, no, sir, there was one credit was not.

Q. Where was that taken from? A. I don't know; it was simply placed in the ledger to offset something.

Q. And that credit, will you read the amount of that credit? A. $10,610.51.

Q. You don't know where that was obtained from? A. No; it was not obtained from the cash book.

Q. Can you tell us when it was put in that book, Mr. Smith? A. At the time when the extensions were made, my recollection is.

Q. In other words, when the extension to the balance column was made? A. Yes, sir.

Q. You are not certain of that, though, are you? A. Well, that is my recollection, that is all.

Q. You cannot actually remember doing it on that occasion though, can you, that is simply your judgment from an inspection of the book now, isn't that the situation?

Mr. Hinds: He says it is his recollection. I think it is immaterial to ask him whether it is his judgment.

The Court: Well, "judgment" is not a very good word in that connection.

Q. When I spoke to you before, Mr. Smith, about the examination of May 21, 1913, your recollection was that the change had been made under the head bills purchased? A. Collateral loans.

Q. Or collateral loans. And it is only after inspecting the book that you became aware of the fact that the changes were changes under the heading of individual deposits No. 1 and No. 2; isn't that so? A. Yes, sir.

Q. Now keeping that in mind are you prepared to say that you have any present recollection and can definitely recall when you put in that figure $10,610.51 in the credit column? A. I haven't any definite recollection, but my recollection is that so far as it goes that it was done on that day, because having refreshed my recollection from the ledger if that entry was put in afterwards it would affect the total on the general ledger.

Q. You mean it would affect the footings? A. The footings, yes, which footings have never been changed.

Q. But Mr. Smith, I call your attention to the fact that there have been changes in the balance under those headings, individual deposits No. 1 and individual deposits No. 2; isn't it a fact that those changes in the credit side under individual deposits No. 1 and No. 2 were made in order to produce the figures which are shown in the credit balances under those headings?

Mr. Hinds: I object unless it be shown that they do produce them; I think the testimony has been that they do not.

Mr. Stiefel: Well, now, the witness's counsel has told the witness all about the matter. I think the witness is capable of testifying without the aid of counsel.

A. I should like to figure it out.

Q. (Question read) A. No, I cannot say that they were.

Q. There has been no footing of the debit and credit, the first debit and credit columns under the head May 21, 1913, but has only been a footing of the debit and credit balances under that date; isn't that a fact? A. On the ledger you mean?

Q. On the ledger? A. We never footed the individual—

Q. Just state the fact? A. We footed the balances only.

Q. These additional figures $10,610.51 under individual deposits No. 1 and $1,997.92 under individual deposits No. 2, could not affect the footings under debit and credit balance, could they? A. Not if they were put in at the time the extensions were made.

Q. There was no reason why the insertion of this or the omission of this would affect the footing of debit and credit balance addition? A. If they were put in afterwards and the extension were changed it would affect the footing.

Q. But if no change in the extension were made it would not affect the footing? A. The footing would not be changed, no, sir.

Q. So only indirectly would it affect the footings by forcing a change in the extension; is that right? A. Yes.

Q. Do the extensions as they now stand on the book correspond with the figures in the debit and credit column under May 21st, when joined to the balance of the day before, May 20th? A. So far as I know.

Q. Well, will you go through the calculations. Tell us what is the credit balance under May 21, 1913, individual deposits No. 1, as it now stands there? A. As it stands there $124,192.20.

Q. That first one might also be a two, might it not? A. It has been.

Q. It has been a two. The balance of the previous day was originally $142,125.76, is that right? A. It was at one time a two.

Q. It was at one time a two? A. Yes, sir.

Q. And then was changed to a one? A. It was changed to a one, yes, afterwards.

Q. Now assuming that the credit balance on May 21, 1913 stands at $124,192.20, and the credit balance on May 20th, stands at $142,125.76, will you tell us whether the extension corresponds to the figures that are now on the book under the head individual deposits No. 1 and individual deposits No. 2? A. I am speaking of No. 1; there is a difference of $17,900 in the extension.

Q. Despite the fact that you have inserted there $10,610.51? A. That is including that as a credit.

Q. Including that as a credit? A. Yes.

Q. There is still an over-extension of $17,900? A. I don't know whether it is over or under; an over extension.

Q. In other words, taking the book as it now stands anybody starting from the balance on May 20, 1913 and having only before him the figures under head of individual deposits No. 1 and in-

dividual deposits No. 2 could not arrive at the credit balances under date of May 21, 1913, under those same headings? A. Not in No. 1.

Q. He could in No. 2? A. I haven't tried that one yet.

Q. All right, try that and give me your answer. A. The same with No. 2, there is a difference of $5100 in extension.

Q. You are not prepared to tell us, Mr. Smith what figures were originally written under head of individual deposits No. 1 and individual deposits No. 2 in the credit balance column of May 21, 1913? A. No, sir, I couldn't tell that.

Q. And you cannot tell us what figures the committee may have seen there? A. No.

Q. You cannot say that with any degree of certainty? A. No, I think not; I think these were—

Q. Don't tell us what you think, answer my question. A. I cannot say that they were.

Q. It was your custom to add up the debit and credit balance columns in pencil first, was it not? A. First, yes, to make sure that they agreed, that is all.

Q. Some times you didn't even put your footings in ink, is not that a fact? A. Some times, yes, sir.

Q. Can you tell us today positively when those footings in the debit and credit balance columns of May 21, 1913, were put there? A. These ink footings you mean?

Q. Yes? A. No, sir, I couldn't tell you.

Q. Now turn to December 14, 1912, will you please. The only alteration which you made there during the course of the examining committee's examination was in the item collateral loans? A. Yes, I think so.

Q. And you simply added a one? A. And left the footing as it was I guess.

Q. Well, you changed the "1" under that item? A. Yes.

Q. Or under that heading, I mean, in that item. I understood you yesterday to say that that change was made in the collateral loan figure during the course of the examination after proof on collateral loans was made; is that right? A. That is my recollection, yes, sir.

Q. And that change was made in order to force the footings, is that it, or to force a balance in the footings? A. Yes.

Q. The change is a change of $100,000, is it not? A. Yes, sir.

Q. As the debit and credit balances now stand there is the footing on the debit side the same as on the credit side? A. Yes, sir, they agree.

Q. What is the date of the examination before that to which inquiry was directed?

Mr. Hinds: April 11, 1912.

Q. Turn to April 11, 1912. On that date I believe you testified that only the bills purchased account was doctored? A. I am not sure that that was the only account.

Mr. Hinds: I object to counsel putting testimony in the mouth of the witness; he made no such statement, and such is not the fact.

Mr. Stiefel: Well now, he has answered for the witness, counsel has.

Mr. Hinds: I do not object to your asking him what he did say, but I do object to your putting something in his mouth which he did not say.

The Court: Well, the witness is perfectly capable of taking care of himself.

Q. What is your answer? A. As I remember it there were two discrepancies that we talked about yesterday, one in the bills purchased and one in individual deposits No. 2.

Q. Do you remember what the discrepancy in individual deposits No. 2 was? A. $50,000 I think.

Q Was there an under statement of April eleventh or an over statement by $50,000? A. An under extension of $50,000.

Q. That under extension was made so as to make the aggregates of individual deposits No. 1 and individual deposits No. 2 agree with the sum total of the footings of the demand ledger; is that right? A. I am not sure that that is so; as I remember, it was done to cover up $100,000 that was in the statement.

Q. Cover up $100,000 in what statement; in the statement on the book here? A. Yes, sir.

Q. In other words, if the extension had been made correctly the debit and credit side would not have balanced; is that it? A. Yes, that is true.

Q. Did they balance the previous day? A. Yes, sir.

Mr. Hinds: That being a matter of demonstration from the book itself I object, unless the witness's attention is called to that fact; whether a given column of figures before counsel foots or does not foot is a matter of immediate demonstration.

The Court: But this is cross-examination; counsel can put his questions in his

own way; this witness is thoroughly competent to answer.

A. Apparently they did, yes, sir.

Q. The footings of April tenth in the debit and credit balance column are correct as the book stands? A. As the book shows it they agree.

Q. And on April eleventh with reference to the debit and credit balance that is also true as the book now stands? A. Yes, sir.

Q. On April 10, 1912, individual deposits No. 1 is not under stated by $50,000 is it? A. No. 1 or No. 2?

Q. No. 2? A. I think not.

Q. But on the subsequent day it is? A. Yes, sir.

Q. Is there any other item aside from bills purchased that is incorrectly stated on April eleventh?

Mr. Hinds: I object, if your honor please, unless it be made to distinguish between errors obvious on the face of the general ledger or errors in summarizing the results shown on other books of the bank; there is quite a distinction there.

The Court: I do not see why counsel cannot proceed in his own way. You thoroughly understand this matter, and if there is any correction to be made or anything to be brought out on re-examination you will have the opportunity of doing it. I cannot control the course of counsel's cross-examination.

Q. (Question read) A. And the deposits No. 2?

Q. In addition to deposits No. 2? A. I cannot

tell what without proving up to the different bank statements on here, the bank accounts I mean, the balances due from banks.

Q. The only two of which you know at the present time are those two, bills purchased and individual deposits No. 2? A. That is the only two I recollect now from memory; I can't tell, though.

Q. On April eleventh is the balance of $525,071.09 an over extension or an under extension, or does it involve an over extension or an under extension? A. It involves an over extension.

Q. By how much? A. $50,000.

Q. Can you tell when those two entries to which I have directed your attention, namely, the respective debit and credit balance entries under head of individual deposits No. 2 and bills purchased were made on April eleventh, with respect to the visit of the examining committee, Mr. Smith? A. They were made at the time the extensions were made in the afternoon of that day, to the best of my belief.

Q. You cannot tell when, with reference to the work of the examining committee or to any point of it, though, can you? A. No, sir.

Q. Have you any recollection, Mr. Smith, when the work of the examining committee was finished, as far as everything except the reconciliation of accounts was concerned on April 11, 1912? A. I can only take it in connection with other examinations; they all took about the same time as I recollect.

Q. How long was that? A. Well, long into the evening.

Q. Seven or eight o'clock? A. At least eight o'clock or perhaps later. Now that is with the

exception of the individual accounts, they were not checked up that night as a rule.

Q. And with the exception of the reconciliation of the depository banks? A. I mean besides that, yes, sir.

Q. Outside of that the work of the committee would be finished on the day of their visit, as a rule? A. With the exception of going over the stocks and bonds which were kept down in the Fidelity Trust Company.

Q. Now Mr. Smith, you explained to the Vice Chancellor that the $50,000 which was paid into the bank by the original purchasers of stock was carried as a surplus; in addition to that didn't you have an additional reserve to meet doubtful paper?

Mr. Hinds: I object, unless the words "have to" are explained; do you mean "have to" by law, "have to" by necessities of bookkeeping or "have to" by some resolution of the directors?

Q. (Question read) A. Well, we had a profit and loss account and we had a provident reserve fund.

Q. What was the nature of that provident reserve fund? A. That was an account in which we kept a reserve which we kept adding to in small amounts to meet any direct losses, as I remember it, either through the depreciation of bonds or securities that were held, or purchased paper that proved to be below its face value.

Q. When you say you had such a fund you do not mean that you kept a separate fund in a separate place?

The Court: He does not say he had a fund, he says he had an account.

Q. Or an account. The assets or moneys or things in that account were mingled with the general funds and assets of the bank? A. Yes.

Q. Does that account show on this general ledger? A. I think it does, it does here in 1911, and I think later on it was transferred in the individual ledger; I am not positive about that; that is my recollection.

Q. It was transferred there as if it was a special customer of the bank? A. Yes.

By the Court: Q. How could that be, I do not understand? A. This is only my recollection, I may be wrong, but instead of having it show on our daily statement as earned, put it in our individual ledger as an account which was inactive, to be used if we needed it.

By the Court: Q. Do you mean that you put into your individual ledger an account called provident reserve? A. I think, I am not positive about that, that is my recollection; I could tell by looking at the individual ledger.

By the Court: Q. And then when you came to make the additions showing the aggregate of individual balances you included that? A. Oh, yes, sir, yes, sir.

Q. In other words, you did not carry it any longer under a separate head, that was the only change you made? A. Yes, as I remember it. I may be wrong in that, I may be thinking of some other account, but that is my recollection without refreshing my memory.

Q. You don't remember that that account was ever discontinued, do you? A. My recollection is not clear as to that point.

Q. And that would appear on the customers

ledger as an indebtedness of the bank, so to speak, to this special account? A. If it were so inserted, yes, sir. We had a book which showed this provident reserve fund which would tell the whole story.

Q. A special book? A. Yes, I kept it in a separate book.

Q. And that was there when the bank closed? A. Yes, sir.

Q. Now with regard to dividends, Mr. Smith, do you ever remember any discussions with Mr. Odell with regard to the subject matter of dividends and the propriety of their declaration, and so on? A. Yes, sir, I remember that the matter was discussed at meetings of the executive committee at which Mr. Odell was present.

By the Court: Q. What dividends did you pay?

Mr. German: One and a half, and along toward the last two per cent extra.

A. We paid ten per cent a year.

By the Court: Q. Payable quarterly? A. Quarterly, yes, sir, regularly quarterly of one and a half per cent which made it six, and two per cent extra every half year I think it was, that made it ten per cent.

Q. Do you recall analyzing the condition of the bank as exhibited by your statements with Mr. Odell in the presence of the executive committee? A. So far as the undivided profits were concerned, yes, sir.

Q. That was quite customary, was it not? A. It was customary to talk over things.

Q. To canvass the situation thoroughly and determine whether the bank was in a condition to declare a dividend? A. It was customary for

the directors, the members of the executive committee, to vote or to give their opinion as to whether we could afford to pay a dividend or not, judging from the profits as shown by the statement.

Q. Now with regard to the overdraft on the Union National Bank, was your account with the Union National Bank ordinarily satisfactory? A. It had been up to perhaps within the last six months of the bank's existence.

Q. Now suppose a big customer came into the bank and made a draft, or a draft was made by a customer on your bank and you had to honor that, how would that affect, or how might that affect your account with the Union National Bank or any other depository bank; would it have any effect, in the first place? A. It is according to how the draft came to us, whether it came from the Union National Bank or what bank it came from, or if it were presented at the window for payment.

Q. Well, did the presentation of a large number of drafts by customers in the aggregate, or any large draft, have anything to do at any time with your overdrafts on the Union? A. Yes, sir, at times.

Q. Explain that to us? A. I remember, I can't give the date exactly, but I think it was the latter part of 1912 or the early part of 1913, we had an account with James McCreery & Company of New York and they drew heavily against us, twenty thousand dollars at a time, in fact, they drew so heavily that I called their attention to it, and they closed their account and drew out, I think it was eighty some thousand dollars in that period.

Q. A bank meeting with unexpected drafts, and having depository banks, as all banks have, might very readily beforced to make an overdraft on some of these depositories is not that true? A. It is true only where a bank is clearing for another bank. What I mean by that is, as is done in Newark where there is no clearing house, a Trust Company clears through a National Bank, and the Trust Company, unless it has a good sized balance in that bank, sometimes is liable to be overdrawn, your account is liable to be overdrawn because they never know how much their exchanges are going to amount to.

Q. And the Union National Bank handled your exchanges, did they not? A. Yes, sir.

By the Court: Q. When you say "handled" won't you tell me exactly what function the Union National Bank discharged toward your bank? A. The Union National Bank accepted from all the other banks in this city checks on the Roseville Trust Company, just the same as if they were their own checks; in other words, they cleared all our checks for us, and we got them in bulk instead of getting them from each individual bank.

By the Court: Q. For instance a check was paid by the State Bank and drawn on your bank, suppose that were so, suppose a customer went into the State Bank and they cashed a check drawn on your bank, where would that check go? A. That check would go from the State Bank the next morning to the Union National Bank.

By the Court: Q. Well, why would it; because the Union National Bank was known by all the banks in the city to be your depository here? A. Our clearing house.

By the Court: Q. Your clearing house? A. Yes.

By the Court: Q. Well, then you announced to all the banks that any checks drawn upon your bank could be cleared through the Union Bank, is that it? A. We announced to them that fact, yes, sir, we announced that the Union National Bank would act as clearing house for our checks.

By the Court: Q. I suppose that if a check on your bank had been handed in to the paying teller of the State Bank the paying teller would not pay that check unless he knew the drawer of the check, would he; it is not the custom of banks to pay checks indiscriminately that may be handed in to them? A. No, sir.

By the Court: Q. He would have to know the man who presented the check, would he not? A. Certainly, yes, sir.

By the Court: Q. And be reasonably certain that he was good? A. Yes, sir, certainly.

By the Court: Q. Well, that would depend upon his personal knowledge. Now the Union Bank would get this check and they would have no personal knowledge. Would they trust to the action of the State Bank in that matter, and merely on the action of the State Bank in cashing such a check would they clear that particular check? A. Yes, sir, they would have the National State's endorsement on the back of the check, upon which they could hold the National State Bank in case the check was returned.

By the Court: Q. The National State Bank when it sent that check to the Union Bank would have to become personally responsible? A. Their endorsement appeared on it, yes, sir.

By the Court: Q. When you speak of the term "clearing," all you mean by that I suppose is that at the close of each day there would be checks of that sort coming in to the Union Bank which they would offset against the deposit that you had with the Union Bank; is that it? A. Yes, sir.

MBy the Court: Q. That would be the operation of clearing? A. Yes, sir.

By the Court: Q. Now would it include anything else? A. It would include the checks that they had received themselves against us, of course.

By the Court: Q. Yes; that is to say that if a check on the Roseville Trust Company was presented at the Union Bank they would cash it if they knew the man who presented it? A. Yes.

By the Court: Q. That would be the operadiscriminately because it happened to be on the Roseville Trust Bank? A. No, sir.

By the Court: Q. But they would cash it because they knew something about the drawer of the check? A. Certainly, or the presenter of the check.

By the Court: Q. Suppose that the checks were so numerous that the deposit that you had with the Union Bank was not sufficient to meet them, that would present the situation that you have been talking about? A. Yes, sir, exactly.

By the Court: Q. That situation would not be produced in any other way, would it? A. The only other way, your Honor, it could be produced would be by carrying a false balance on our books.

By the Court: Q. Well, but they would not be cognizant of that? A. No, sir.

By the Court: Q. Then that could not affect

them one way or the other? A. It wouldn't affect them in any way at all, no, sir; it might show an overdraft there and might show a balance in our institution; that is all I mean.

By the Court: Q. Well now, what was the function of a bank like the Albany bank. That bank was so far away and in such a different locality that it seems to me that would not be any advantage in making such a bank a depository; what was the idea of that? A. Well, your Honor, we had correspondents in Chicago as well; we handled a great many out-of-town accounts, that is, I don't mean the accounts were so numerous, but the few we had gave us a great deal of out-of-town business, western checks, checks all over the country in fact, from Claflin and McCreery and O'Neil-Adams and different depositors, and these various banks throughout the country would clear or would act as our depository and accept these checks on outside banks as cash or on deposit for us to draw against, providing we kept a fair balance, of course we would have to keep a fair balance with them.

By the Court: Q. But what was the necessity of going to Albany when you could go to the Irving Bank in New York, which is a much more central place, and one to which I suppose the banks throughout the country would naturally go? I do not understand it. I do not know anything about banking. A. The reason for that is on account of the clearing house law in New York City, they charge exchange on all checks outside of New York or certain districts, they charge exchange, and if we deposited those checks with New York it would be unprofitable.

By the Court: Q. You would be charged with that? A. The exchange charge against us would more than make up the profits that we would make on such business, so that Albany handled these checks at par, as well as Chicago.

Q. Isn't it a fact that the Union National Bank got from you or you deposited with them a good many South Jersey checks for which you didn't receive credit, or against which you couldn't draw until they were collected? A. No; they did some out-of-town checks, they were small as a rule in bulk, that is in aggregate I mean.

Q. Could you draw against all your deposits with the Union National Bank even before the checks which were represented in the deposit were collected? A. We weren't supposed to do it, we were supposed to keep a fair balance there, both to pay the Union National Bank for the trouble of clearing our checks, and also for collecting what out-of-town checks we did give them.

Q. The scheme was to keep a clear balance over and above the items which were floating around and being collected by them? A. Yes, and also to keep a balance that would be worth while for them to act as our clearing agent.

By the Court: Q. It was just like lending them money without interest, that is what it amounted to, was it not? If you put a deposit of $10,000 in the Union Bank and kept it there you did not charge interest on that and you did not get any interest, and they had the benefit of the money without paying any interest for it? A. Yes.

By the Court: Q. And that is the advantage, and the only advantage except in so far as it might help to swell their own assets and make

them a more considerable financial institution? A. Yes, sir.

Q. Overdrafts might occur even without your knowledge, is not that so, Mr. Smith? A. Yes, sir.

Q. Now Mr. Odell would come there practically every morning and go over with you the question of proposed loans, purchases of paper, whatever you want to call it, isn't that true? A. Proposed loans?

Q. Yes, would go over with you this question, people had come in to see you and had requested accommodation, we will call it, wanted to get some of the bank's money and give you notes in exchange for it, and you would discuss these requests with Mr. Odell day after day, wouldn't you? A. I have done so, yes, sir, but not in every instance by any means.

Q. But it was an almost daily occurrence for you to talk to him about that, that or other request for accommodation, was it not? A. Yes, it very often was.

By the Court: Q. Let me ask one more question in reference to the topic I was asking about. I do not quite see why it would not have been more advantageous for you to eliminate the Union Bank altogether; your bank was in the same town; now if the ten thousand dollar deposit, or whatever it was, remained in your bank you would have the advantage of it; in the case of Newark why could you not act as your own clearing house. I can understand how it would be advantageous to have a depository bank in other cities, but in Newark I do not see why you could not act as your own clearing house. It seems to

me that when you make the deposit you are conferring a benefit upon them, they are getting the money and do not have to pay any interest for it; now they are rendering you a service, and that service consists in acting as a sort of clearing house, but why could you not act as your own clearing house and keep the money besides, being in the same town? A. As I remember it they did pay us interest on a certain balance over and above a certain amount, but the advantage in keeping an account here was a mutual advantage, it was an advantage to us and an advantage to the Union National, so far as that is concerned, when the account was worth having, if it was worth having, or any account was worth having; it is just the same as an individual account.

By the Court: Q. If you could get the account. For instance, suppose the man that had the ten thousand dollars was John Smith; now you would both try to get John Smith's account; if it averaged ten or fifteen or twenty thousand dollars it would be a decided advantage for you to have that account? A. Yes.

By the Court: Q. And it would be an advantage for the bank that got it to retain it. Now why would not the same thing apply as between the Union Bank and yourself? Here is ten thousand dollars to be deposited, it can be deposited in the Union Bank by yourself or it can be deposited in your own bank; now why is it not altogether to your advantage to have that deposit in your bank, unless by depositing it in some other bank you can get such a high rate of interest that you would find it advantageous for that reason only, a practice of course which does not

obtain. I do not quite understand that, I do not understand how it can be of any advantage, in other words, to a bank to decline a deposit which it might have in its own bank. A. Well, your Honor, these weren't deposits, these were all withdrawals, these exchanges were items against us.

By the Court: Q. Oh, I understand that, but I am talking about the money that you had on deposit in the Union Bank; now why would it not have been more advantageous for you to have had that money on deposit in your own bank, acting as your own clearing house? A. In the first place, as a rule the Trust Companies in this City have never cleared for themselves, that I know of, the Fidelity even clears through the Union National, the Federal does, and the National Bank as a rule has always acted as a clearing house for where a Trust Company is doing business.
to have a depository of some kind in the city is that you have got to have, it is necessary Trust Companies in this city. Another advantage

By the Court: Q. You say it is necessary, why is it necessary? A. We have got to have somebody to draw on besides ourselves.

By the Court: Q. If you cannot draw beyond the amount of the deposit it is just as easy for you to draw on your own deposit and easier than it is to draw on a deposit which you made with some other bank? A. I understand that, your Honor, but there are certain benefits derived from having a correspondent near at home where you can have accommodations, such as bills, for instance, and currency; you can deposit your currency there temporarily and it takes it out of your own safe and relieves you of that risk; also when you need currency you can get it quickly.

By the Court: Q. And then I suppose the bank would aid you in case of a run, for instance, if you deposited with that bank collateral? A. Yes, sir.

By the Court: Q. They would aid you more than an outsider would; is that it? A. Yes, sir, that is true, and not only that, so far as the money is concerned it is just as good on our books due from banks as it is cash, it is one and the same so far as bankers look at it.

Q. Didn't it also have this advantage, it enabled you to deposit a whole lot of checks with the Union National Bank and left to them the trouble of eventually collecting them through the various collecting banks in various parts of the country? A. Yes, that is true; that is something I overlooked.

Q. And that system of collecting out-of-town checks is one which must be understood and requires a good deal of help and is more or less complicated? A. It requires a great deal of help and a great many correspondents to handle out-of-town items.

Q. So much so that within recent years some of the banks, or rules have gone into effect by which specific charges are made for collecting out-of-town checks, isn't that so? A. Yes.

Q. So that a big powerful institution like the Union National Bank to aid you in your work was more than desirable, isn't that true? A. Yes, sir.

Q. In fact a necessity for your business? A. It was necessary, yes, sir.

Q. If you hadn't had these depository banks around could you have done your business with

the force that you had and the resources that you had in a proper banking way, and with satisfaction to your customers? A. We couldn't have done it with that force we had by any means or as economically.

Q. All the trust companies around here—

The Court: Well, he stated that several times and I understand it now. It is perfectly evident that there are advantages attendant upon it which would make it desirable to pursue the ordinary practice.

Q. Now I asked a question, I think it was about approval of loans. On such occasions the line of credit of the customer would be frequently discussed, would it not, whether he had exceeded his line or had a big line or whether his line should be curtailed or the like? A. Not as a rule in morning conversations—that was done more at executive committee meetings.

Q. There is where these important questions of the line of credits and so on would be taken up? A. Yes.

Q. You would be asked your advice and participate in the discussion, wouldn't you? A. Yes, sir.

Q. Do you remember yesterday in adding up certain figures in the paying and receiving tellers cash book whether you had included the reserve cash items in making cash additions, do you remember whether you did? A. Yes, I did, I included those.

Q. Those are shown in the paying and receiving teller's cash book? A. The paying teller's proof, and so is the reserve cash if there is any.

Q. This reconciliation book, can you tell us during what periods it was kept by you, and just

in a general way? A. July, 1912 until the close of the institution.

Q. You kept it? A. Yes, sir.

Q. And prior to that? A. Jennings kept it.

Q. In general? A. Yes.

Q. There may be specific dates on which that is not true I presume. Now Mr. Smith, will you turn to May 21, 1913, again; can you tell us what figure originally stood where the figure $941.37 in the debit balance column under building income now stands? A. No, I cannot, I can imagine what it was but I cannot tell you.

Q. This interlineation sixteen, or is that seventeen thousand? A. Seventeen thousand nine hundred.

Q. Seventeen thousand nine hundred in bills purchased credit column of Wednesday, May 21, 1913, can you tell us when that was made? A. To the best of my knowledge it is made on the day it is entered there, twenty-first of May.

Q. After the committee got through inspecting bills purchased or before? A. Before I believe.

Q. But after they had commenced? A. Well, they had commenced on the bills purchased before I started really to post this ledger; I didn't get my entries until nearly four o'clock, quarter of four, somewhere along there, and the committee were already there at work.

Q. Normally, unless you were unable to balance your cash or found some difficulty in balancing accounts, you could clean up and leave by about four o'clock, couldn't you? A. On ordinary days you mean?

Q. Yes. A. Yes, I could get through by that time, but as a rule I didn't post this ledger until the following morning early.

Q. How long would it take to post the ledger? A. Well, it would take me about fifteen or twenty minutes to post it and extend it.

Q. So that you could be through with all the work and have your footings by about a quarter past four, normally? A. On that date?

Q. Normally? A. I didn't post it in the afternoon as a rule; I could have.

Q. You could, that was the time in which you could have done it? A. That is hardly a fair average, because there were days when it was five or six o'clock before we were through with the general work of the bank.

Q. You don't remember at what time you made your entries and your extensions on May 21, 1913, do you, you cannot tell us that now? A. I can't tell you just at the time it was by the clock but it was sometime after the bank closed that afternoon.

Q. Yes. A. But I couldn't tell you just the exact time, no, sir.

Q. And the same is true of the other days of examination to which your attention has been directed? A. Yes.

Q. I believe you said that the first incorrect entry was in the early part of 1912? A. I think it was 1911.

Q. In 1911? A. Yes; in what account do you mean, sir?

Q. In any account on the general ledger? A. I think about the first part of 1912, yes.

Q. Will you please identify this paper; those are the figures you used yesterday, are they? A. They are my figures, I don't know just what day or what account they pertain to now.

Q. But they are your figures made here in court? A. Yes, sir.

Q. And similarly with those that you used today? A. Yes.

Mr. Stiefel: I would like to have those papers marked for identification.

Marked Exhibits for identification L-1 and L-2.

CROSS-EXAMINATION by Mr. Cornish:

Q. Do you happen to recall the dates of the examinations by the Examiner for the Department of Banking & Insurance during 1912? A. Why I know there was an examination in October, 1912, around the fifteenth, I think.

Q. Now, Mr. Smith, I understood from your direct-examination that the checks which were presented to the bank and paid although there was no money in the account of the drawer to pay them, after being kept for a time in the paying teller's cash they were taken out by you when they reached a sum which you thought inadvisable to have in the cash; isn't that so? A. Yes, sir.

Q. And that when you took them out you accounted for them, for the cash that they had represented, by a fictitious entry in the ledger, in some account? A. Yes, sir.

Q. And the checks which represented that fictitious entry you filed in box 55? A. For the most part, yes, sir.

Q. Or perhaps they laid on your desk? A. Some times there were some on my desk.

Q. So that if the checks filed in box 55 and on your desk had been considered an asset of the bank and figured as an asset of the bank on the

books the statement on the books would have been correct, that is, there would have been no difference between the assets as they appeared on the books and the actual assets, supposing that these checks in box 55 had been listed as an asset? A. You mean at the closing of the institution, at the time the bank closed?

Q. I didn't refer particularly to that date, but I mean as generally running through the history of these fictitious entries? A. I have always maintained and believed that for every dollar that ever went out of the Roseville Trust Company there was a voucher of some kind to offset it.

Q. Those were the vouchers in box 55 and on your desk? A. Yes, sir.

Q. Now I think you stated that these fictitious entries commenced in early 1912? A. Yes, as a rule they did; I think there was one, the Nones matter, dated further back than that.

Q. I know, that was in 1908, was it not? A. That was 1909, but that was cleared up at the time.

Q. That was cleared up? A. By him, yes, sir.

Q. So that from early in 1912 through to the close of the bank there was at all times a difference between the assets of the bank as shown on the book and the actual assets of the bank, if you leave out of account the checks in box 55 and on your desk? A. Yes, sir.

Q. That was true at the time then of the examination by the Commissioner of Banking and Insurance? A. That was true.

Q. Of that year? A. In 1912, yes.

Q. Now yesterday, you were shown a list of a list which you made after the close of the bank

of notes, or the list was made from a list made by the Department of notes found in box 55; do you recall that? A. Yes, sir.

Q. I think that you testified that those notes represented on that list, as you recall it, were made up of notes which some of them had been approved by the executive committee and some not? A. Yes, sir.

CROSS-EXAMINATION by Mr. Congleton:

Q. Mr. Smith, the Roseville Trust Company had a vault and rented out safe deposit boxes, didn't they? A. Yes, sir, we had I guess about fifty-five or so boxes.

Q. And this box 55 that has been referred to was one of those boxes? A. It was, yes.

Q. Did the records of the bank show that box 55 was in use? A. I think not.

Q. This was a box which had been taken by you and used for the purpose that you have stated, without the knowledge of anyone so far as you know? A. Except the clerks of the bank.

Q. The clerks in the bank knew you were using box 55? A. Yes.

Q. But so far as you knew no officer or director of the bank knew that box 55 was being used or had been rented? A. So far as I know, no.

Q. And you had the key to that box yourself? A. I had possession of the key at times; other times the key was in the box.

By Mr. Hinds: Q. You mean in the lock? A. In the lock of the box, yes.

Q. And were the keys in the other boxes that were not rented? A. No; the keys were all kept in one place, and that was in a small safe deposit box, that was the key box.

Q. Mr. Smith, you have told us with respect to certain occasions when the examining committee was making examinations as to how you changed figures to make them tally; for that purpose did you have a separate set of figures of your own which you kept up to date from time to time? A. No, sir.

Q. How was it that you were able to make these figures or know what amount to put in? A. Well, they appeared more or less in the ledger, carried them along from time to time in the general ledger.

Q. In figures of your own which you could look at and tell what the amount was at a certain time? A. Yes, sir.

Q. And those were figures not set down in the regular columns in the ledger? A. Not at all times, some times yes and some times no.

Q. But they were pencil memoranda that you had put in the book for your own use? A. In some places, and other cases there were entries made on certain accounts in the individual ledger.

Q. Mr. Smith, yesterday morning you told about certain deposits that had been made in savings accounts, and testified to the deposits having actually been made from certain books shown you, but where the true amount had not been set down in the ledger of the bank, which sum would amount to a considerable figure. Was it the money that was abstracted in that way that had been used to pay the checks and notes that you had honored for people whose accounts were not good for the amounts and represented by the notes and vouchers in box 55? A. Yes, sir.

Q. That was the way in which you made those

checks and notes good? A. That was one way, yes.

Q. And that is where that money went? A. That is to the best of my recollection where it went, yes sir.

Q. You spoke yesterday about one check of Mr. Foster's that had been returned because on the ledger his account wasn't good for it; do you recall the amount of that check? A. It was a very small amount, I think something like nine dollars.

Q. You said that Mr. Foster spoke to you about it when he learned of it, and do you recall what explanation was made to Mr. Foster at that time? A. I believe that I told him I never had seen the check before, didn't know that it had been presented, and the teller returned it.

Q. Do you recall that you told him at that time that there must be a mistake about it? A. I might have said that, in the way, meaning that it was a mistake in sending the check back.

Q. Do you recall that you went out and spoke to the teller, and the teller, Mr. Thompson, was sent in to tell Mr. Foster that it was sent back by mistake, had gotten into the wrong batch of checks? A. I couldn't say as to that, I don't remember that part of it.

Q. Now with respect to the Bierman note; do you recall when it was that you had a conversation with Mr. Foster about that, with respect to when the bank closed was it shortly before or not, can you recall? A. Why I am not sure that I ever had a talk with Mr. Foster about that matter; I had a talk with somebody about it.

Q. Do I understand that you yourself had any conversation with Mr. Foster about that? A. I

do not remember having had a talk with Mr. Foster.

Q. Your conversation was with Mr. Jennings? A. I believe so.

Q. Do you recall when this Foster check incident was? A. It was in the spring of 1913 I think, I should say in May or June.

CROSS-EXAMINATION by Mr. Fairlie:

Q. Isn't it a fact that the overdrafts which were entered in the book in red ink were such overdrafts as might have arisen in the course of any well and regularly conducted banking business, whereas those which were not entered in the books but were found there on your desk and in box 55 were those which you were attempting to conceal; is that a distinction which exists between the red ink overdrafts in the books and the overdrafts which were not in the books? A. Taken as a rule, yes; there were at times large overdrafts appearing on the ledger through an error or through an oversight in not putting the credit through that was due perhaps on a note that was pending, something like that; that would happen in any institution perhaps.

Q. But as a rule those overdrafts in the books in red ink were proper overdrafts in a well conducted banking institution? A. I would say so, yes, sir.

Q. Now will you explain to us the advantage, if there was any, which the Roseville Trust Company derived from the Claflin account? Was it an account for collection, in which you got collection charges, and explain to us fully that account and the advantage of it?

The Court: What is the object of that?

Mr. Fairlie: Considerable testimony has already been given about the exchange of the checks in connection with this Claflin account.

The Court: That is no charge in connection with the Claflin account. I take it for granted that to have an account of the magnitude of Claflin's account was a great advantage. You need not go into that. The banks are only too willing to have big accounts.

Q. Did you take care of collections for Chaflin & Company?

The Court: That does not make any difference. If any charge had been made in connection with the Chaflin account then we could go into it. The only relevancy that the Claflin account has in this case is that to a certain time at times it was a very large account and from that time on it became very much smaller; that is the only relevancy that account has in this litigation.

Mr. Fairlie: There is no charge in the bill but there are a lot of nasty insinuations which cast a cloud not only upon this Claflin account but attempted to be directed at Mr. Odell, and letters have been referred to and checks.

The Court: Oh, no, I have not heard any.

Mr. Fairlie: Well, I am very glad your honor did not take that view of it.

The Court: Do you make any charge in connection with the Claflin account?

Mr. Clark: We have proved through Mr. Smith that he occasionally got funds from Claflin which were not in the ordinary course of business but which were to help the trust company out in an emergency, and that he gave back to Mr. Odell for Claflin checks of the Roseville Trust Company which were to be held for a day or two. The significance of that is that it brought to the attention of Mr. Odell knowledge that the trust company practically had to date its checks ahead, and Mr. Odell stated that he reported to all of the directors the facts which were brought to his attention with regard to the company being from time to time short of cash.

The Court: But there was no loss from that.

Mr. Clark: It is simply an indication of the irregularity in connection with this very account. There is no doubt that the Claflin account, so far as the exchange and the collection end of it, was a desirable account, but it is in evidence that there was an interchange of checks that was not in the regular course of business.

The Court: Well, there was no loss from that; I do not think it is worth while to go into it.

Q. You heard what counsel has just said about this interchange of checks; was that done for the purpose of obtaining New York funds? A. Yes, sir.

Q. Now what do you mean by New York funds? A. Money that is available in New York, that is,

money that we could draw on from our bank in New York.

Q. Without paying an exchange? Does that enter into it? A. Some times it does, but I didn't mean it that way at all. It is necessary to pay certain indebtedness, if you call it that, or make certain deposits in New York funds or cash. For instance, when the Union National Bank has been overdrawn, has paid out I mean to us more than our balance in paying daily exchanges they want some thing that will go right into their reserve, such as cash or New York funds, and at such times as that it was necessary to have New York funds and funds that we could draw on against our correspondent in New York.

Q. If you were making a deposit in a case like that in the New York bank, or in the Union National Bank it would have to be either in cash or New York funds; is that so? A. Yes; they would prefer New York funds to cash really.

By the Court: Q. What do you mean by New York funds? A. New York exchange, your Honor, New York money, money that will go through the exchange tonight, for instance, in New York City, and be the same as reserve for a New York bank or any bank that uses it.

By the Court: Q. Now is that any check, any good check, whether the check be drawn on a bank would that be New York funds? A. No, sir, it would have to be drawn on a bank in New York City.

By the Court: Q. New York funds means checks drawn on banks in New York City? A. Yes, sir.

Q. For instance, if you drew a check on the

Federal Trust Company with a view to putting it in the Union Bank what would have to be done with that check to make it New York funds, or how could it be converted into New York funds? A. It would be certified payable New York by the teller, or a draft procured in place of it on a New York Bank.

Q. Well, when a need arose for available New York funds, as a rule such funds as you had at also items in favor of the Roseville Trust Company or otherwise readily available, would they be New York funds as a rule? A. Not as a rule, no.

Q. Now these checks which were shown to you with the letters attached which you sent to Mr. Odell for the purpose of getting New York funds, will you explain that transaction and how the checks which you sent were for the purpose of getting New York funds, and how the New York funds were obtained in that way? A. These that were drawn to my attention yesterday are our own drafts on New York City, and I think I explained it yesterday that we didn't want to depreciate that balance too much in the Mutual Alliance Trust Company as we had a loan there and it was necessary for us to carry a certain amount of balance in order to keep the loan alive at that bank.

Q. But at the same time you dead-ended New York funds here in Newark? A. Yes.

Q. But didn't want to take them from the New York bank? A. Didn't want to draw on our funds in New York because our balance would have been very small if we had drawn against it.

Recess.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. You spoke of posting from the original items into the general ledger and into the general cash book; is that true also with respect to the individual ledgers? A. Yes, sir.

Q. On Cross-examination you said that the footings of the balances on April 10, 1912, were correct but you did not actually perform the operation; now will you just foot those up and see what the fact is?

The Court: What is the fact?

Mr. Hinds: The fact is it was one hundred thousand dollars out the day before the examination.

The Court: Well, they will speak for themselves.

Q. I wanted to be sure that was brought to the Court's attention, that is all. You spoke on cross-examination of a provident fund account; how much was that at its maximum? A. $5,000 I think.

Q. And you were unable to recall definitely from recollection whether or not that ran out; could you do so by looking at any book to refresh your recollection?

The Court: Well, is it a matter of any consequence?

Mr. Hinds: Simply that there was no such account at the time we are complaining of; as I understand the fact to be it ran out.

The Court: It does not make any difference whether there was or was not, as far as I can see.

Q. Now with regard to these dividends which were declared; you yourself were substantially in-

terested in those in a financial way, weren't you, as a stockholder?

The Court: Well, that appears, does it not?

Mr. Hinds: The stock ledger has not been put in evidence.

The Court: Well, he has stated how many shares of stock he held, and that is enough.

Q. With respect to the exchangec with the Union National Bank, was it or not a fact that the iteems were both debit and credit; that is to say, they were not only items presented to be paid but also items in favor o fthe Roseville Trust Company that went through the Union National Bank? A. Through the exchanges.

Q. That is your deposits? A. Yes, there were deposits made and there were withdrawals made on the Union Bank.

Q. Now these exchanges you received early in the forenoon? A. Yes, sir.

Q. So that if they should be unexpectedly large in amount there would be plenty of time during the day to draw on another bank and send a messenger over with a check to keep the balance up; is that right? A. Yes, sir.

Q. It was a fact, was it not, that you were frequently at the bank rather late in the evening on the general ledger and other matters? A. No, except—

The Court: Well, we have gone into all that, and it is not worth while to go into it again.

Q. On cross-examination you said it was early in 1912, that there began to be a shortage. You

referred to a shortage on the general ledger, or did you refer to an actual shortage of the assets of the Trust Company? A. I didn't use the word "shortage."

Mr. Stiefel: That was not used.

Q. I forget the exact word.

Mr. German: Irregular entries in the book is what he said.

Q. You referred to irregular entries in the general ledger, did you not? A. Yes, I referred to irregular entries in the general ledger at that time.

Q. The entries with respect to pass book irregularities occurred as early as 1910, did they not? A. I don't think they went back as far as that.

Q. Well, the dates are in evidence, as testified to yesterday, they were as early as 1910. Now on cross-examination by Mr. Congleton you said that these pass books irregularities were one way of getting funds for the payment of checks which were not charged; I inferred from your answer—and correct me if I am not correct—that that was only a small part, accounted for only a small part of the amounts of the uncharged checks and irregularities on the general ledger; is that the fact? A. It was a smaller part than the entries made on the general ledger, I believe, yes.

Q. Now with respect to the red ink overdrafts; you said that in most instances or many instances these were explainable as expected or usual overdrafts which might occur in any bank; you said that there were however in some instances overdrafts due to an expected credit which you were awaiting which was delayed; by that did you mean in all instances an actual deposit, or did you refer

in some instances to your expectation of making a false credit, the awaiting of which produced temporarily an overdraft? A. At all times it was a question of a credit coming from the individual or a note to be credited to the account.

Q. You said that you have maintained—I think that was your expression—that there were vouchers corresponding to the entire shortage on the general ledger, as I understood you. Have you any recollection of what the aggregate of the vouchers was as found in box 55 or your desk. By vouchers I mean checks uncharged or notes irregularly taken from the files and put in those two places? A. Something over two hundred thousand dollars, I do not remember the amount.

Q. Have you any present recollection as to whether it was as much or less than the book shortage at the close of the institution? A. The book shortage at the close of the institution was I believe never put up to me directly and what I know of it is only hearsay.

Q. And that is true also, is it not, as to your maintaining that there were vouchers to the extent of the book shortage? A. That is what I always maintained.

Q. Simply your impression from hearsay?

Mr. Congleton: No, he didn't say that.

Q. What is the fact? A. The fact is that I have always claimed that there was no actual shortage; there were in the possession of the Roseville Trust Company to the best of my knowledge and belief assets swhich represented thi shortage, so-called shortage; the assets may not have been of full value, or some of them may have been worthless, but there was something there to show the abstraction.

Q. Now will you look at the Bruno account please. I call your attention to an overdraft of over six thousand dolars on August 9, 1913, and to overdrafts in February, March, April of $994 and $1,000, and also overdrafts in June $295 and $318, and I ask you whether those overdrafts were included in your answer on cross-examination respecting the usualness or casualness, I think you said, of these matters?

Mr. Congleton: I object. The witness was asked with respect to the red ink overdrafts, and that is the way Mr. Hinds start-out his question, but I want to call your Honor's attention that on August ninth there is no overdraft extended in the ledger in red ink and I think the question ought to be cleared up.

Q. Had the ledger extension been made on August ninth according to the custom in the bank there would have been a red ink overdraft there of over six thousand dollars, would there not?

The Court: Well, you have gone into all that before, I remember that very distinctly, and I remember those figures. The examination should be limited to the red ink items. The witness has stated that it was customary and proper, as I understand it, to allow an occasional overdraft. Now on that you can cross-examine.

Q. Well, were the overdrafts in red ink in the Bruno account those which happened as an ordinary instance of your banking practice, or have you some other explanation to make of those. I call your attention also to those on the prior page and the page beginning July 12, 1912, when there ap-

pear to be a large number, one of them over a thousand dollars. A. In some instances I notice the overdraft is only for the day, for that day, having been made good on the same day.

Q. How about the overdraft—

Mr. Stiefel: Let him finish his answer.

A. In many instances the overdrafts are caused —in this account I am talking about—by note transactions, where a note has become due and a renewal for same has been sent, with the face of the new note being diminished in a small measure, and no payment, or no deposit rather made to cover that difference, or the interest which maks the account appear overdrawn; that happened in several instances here.

By the Court: Q. That is not the situation, as to whether or not in that particular account the transaction was justifiable or unjustifiable. If any of the directors saw these red ink figures and asked for an explanation and that explanation was given why then the statement of the witness would be relevant, but the question now is, would anybody looking at that book and seeing those figures in red ink be justified in concluding that the overdrafts were such as are customarily allowed in good banking? A. Not on this account, your Honor, no, sir.

Q. I call your attention to the overdraft which appears continuously from August seventh to August twenty-first, 1912, in that account; were those red ink figures there at the time the overdrafts actually occurred? A. So far as I know they were, yes.

Q. By the way, this account was one in which there was also a large number of uncharged

checks representing additional overdrafts, was it not? A. Yes, sir.

Q. Now there was a shortage in the institution due to abstractions by the teller Jennings, was there not? A. I believe so.

Q. And were there vouchers representing that shortage? A. I don't think so.

By Mr. German: Q. This thirty-five hundred dollar account along the latter part of July or the early part of August 1913, of Bellows and Nones; do you remember that? A. Yes.

By the Court: Q. Was that transaction brought home to the directors or any of them? A. No, sir, not to my knowledge, not by myself.

By Mr. Stiefel: Q. You spoke of Jennings. You do not know about this matter of your own knowledge, Mr. Smith, do you? A. I never saw him make any abstractions.

By Mr. Stiefel: Q. You were simply expressing your belief at the present time? A. That is all; that is the way I put it, I believe.

By Mr. Stiefel: Q. And when you say that you do not know whether there were any vouchers or papers there which would indicate what he abstracted, you do not mean to say that you have any knowledge in regard to that matter?

The Court: He says he has no personal knowedge. How could he have personal knowledge that there were vouchers accompanying the abstractions if he did not know of the abstractions.

A. Your Honor, I have some knowledge, there were some accounts that were opened in the bank that Mr. Jennings handled that I knew nothing about and that had been tampered with, and just

how far or how much was involved I do not know; that is the reason I gave the testimony as I did.

By Mr. Stiefel: Q. Did you know that before August 13, 1913? A. Not to the extent that I knew after that date; I knew of one or two instances, they had come to my knowledge toward the summer of 1913.

By Mr. Stiefel: Q. Now with regard to the subject matter of overdrafts in the Frank Bruno account, is it not a fact, Mr. Smith, that in your experience as an experienced banking man that there will be on the books of banks active accounts which may soar to considerable figures and dwindle to almost zero and involve even overdrafts, and repeat this process again and again and again by reason of the peculiar nature of the business of the people that were involved; is not that true? A. That is true, yes sir, in some instances.

By Mr. Stiefel: Q. Is it not true that some of these accounts are nevertheless desirable accounts? A. Yes, sir.

By Mr. Stiefel: Q. An inspection of that account that was shown to you by Mr. Hinds would show that all the red ink entries have been absorbed by black ink entries, wouldn't they, to anybody inspecting them?

The Court: Well, we have gone all over that.

Mr. Stiefel: The only reason I mention that is because your Honor did not want Mr. Smith to give the explanation, the hidden equities of the situation, and directed the question to what was apparent on the face. Now I want to deal with the face of the account too.

The Court: You can show of course, if Mr. Smith can testify that way, that some of the directors saw those red ink columns and requested an explanation and that an explanation was given which seemed to be satisfactory; if you want to show that you can.

Mr. Stiefel: No, I do not, because I do not believe that is the situation, but I am trying to point out to your Honor from this expert who has attempted to explain something in answer to a question of Mr. Hinds and who was told that he should not say that, explain with regard to that but should only deal with what was apparent on the page. I am trying to secure from this expert a statement of what is also apparent on this page.

The Court: Anything that is apparent on the face of the account if it requires explanation can be explained.

By Mr. German: Q. Did you ever bring home to the attention of the directors these wrong doings, as you say, of Mr. Jennings? A. No, sir.

EDWARD F. CLORAN, sworn:

Direct-examination by Mr. Hinds:

Q. What is your occupation? A. Public accountant and auditor.

Q. How long has that been your occupation? A. Twenty-two years.

Q. With what firms have you been connected in that occupation? A. Barrow, Wade & Guthrie;

Patterson, Teale & Dennis; Haskins & Sells; American Audit Company; Milla, Franklin & Stevens; R. Douglass Greet.

Q. Have you been connected with railroad accounting? A. I have.

Q. In what connection? A. As assistant comptroller of the Mexican Central Railroad; general auditor of the New York & New England and for a while with the New York, New Haven & Hartford, when they took over the New York & New England, and assistant auditor of disbursements of the Santa Fe Railroad.

Q. Has your experience included auditing of accounts of banking institutions? A. It has.

Q. To what extent? A. Examining banks that were in excellent condition and examining banks in insolvent condition.

Q. Give us some instances? A. I supervised the audit of the wrecking of the Globe National Bank of Boston, Massachusetts; also the Gate City National Bank of Atlanta, Georgia; the Five Cents Savings Bank, Salem, Massachusetts; I regularly audited the National Security of Lynn, Massachusetts, and the Security Savings Bank of Lynn, Massachusetts; this past winter I have audited the Irving National Bank of the City of New York.

Mr. Hinds: I assume, your Honor, we have qualified him as an expert. Will there be any cross-examination on that subject?

By Mr. Stiefel: Q. Are you out for yourself now? A. I am, yes, sir.

Mr. Stiefel: Q. And have been out for yourself for how long? A. Six years; on and off I have done some work for the large auditing houses.

Q. Have you made an examination of the books

and records of the Roseville Trust Company? A. I have.

Q. Where? A. Directors' room of the Mutual Bank of Roseville.

Q. In whose custody were those when you made your examination? A. Banking Department of the State of New Jersey.

Q. I will ask you whether you have been here throughout this trial? A. I have.

Q. And you have observed what books and records were offered in evidence? A. I have.

Q. And has your examination included an examination and investigation of the books and records that have been offered in evidence in this trial? A. Every book that has been offered in evidence in this trial I have examined.

Q. Now tell us in outline what you have found? We will follow this later with a more detailed account.

The Court: Well, as far as the details are concerned, if you want to put in the evidence now you can do that, but I suppose your evidence will consist of tabulated statements, and I suppose that those statements will need explanation, and after they have been put in and explained I presume that the other side will want an opportunity of examining them; of course those statements are put in with a view of showing losses; now they may be full, or counsel for the defendants may think they ought to be supplemented, or counsel for the defendants may think that they can find mistakes in them; I presume that what the defendants will wish to do will be to employ a

bookkeeper of their own, an accountant of their own, for the purpose of verifying the statements that this witness makes; that is the ordinary practice; all that will require time, and it seems to me that after the statements have been put in and explained that they better be submitted to counsel for the defendants and they given an opportunity to answer them. I do not think it is worth while to go into details on the witness stand or to state anything on the witness stand that appears in the papers, except for the purposes of explanation.

Mr. Hinds: Of course, your Honor, the statements of losses will be only part of what this witness will testify to; we want to bring out the condition and inferences from the books at particular times when it should have been called to the directors' attention, and the statements will require a certain amount of connective tissue, if I can use the phrase, or oral testimony.

Q. Proceed with your outline of what you found from your examination? A. In summary form I would say that my examination resulted in finding that beginning with January 13, 1912, the first irregularity in the general ledger appeared in the amount of $10,000, and continued in this amount until January 31, when it increased to $30,000. On March 30, 1912, this amount had reached the sum of $50,000. On April 12, 1912, it had reached $80,000. On June 29, 1912, $90,000. On July 1st, 1912, $100,000. On August 1st, 1912, it had reached $130,000, and continued on from that point up to the close of the bank, continued in

more or less amounts, increased and decreased, until August 13, 1913 the assets side of the general ledger was over-stated $57,000, and the liabilities side of the general ledger under-stated in excess of $57,000, and the liabilities under-stated in excess of $250,000, or a total in excess of $309,000.

By the Court: Q. Is that the total loss? A. That is only the general ledger manipulations. In addition to that I found that the pass books—

By the Court: Q. You better give us a summary of the whole thing. A. In addition to the amount of $309,000 I found pass book manipulations exceeding $89,000.

Q. I assume which did not appear upon the books? A. Did not appear upon the books in any form.

By the Court: Q. Do I understand by that that you found on examining the pass books themselves that the aggregate of the entries at the time of the closing of the bank was more, by the figure that you have given, than appeared on the books themselves? A. Yes.

Q. Now these aggregates that you have just referred to of three hundred odd thousand, and eighty-nine thousand, are, as I understand it, actual shortages, either on the books or not on the books? A. That is right.

The Court: If there are any other losses let him state them in the same connection. I want to get a bird's eye view, so to speak, of the situation.

A. Giving the detail of some of those that I have just testified to I would say that the cash items first began—

Q. His Honor's suggestion is that before going

into details you tell us what other evidence of other losses you found in addition to the actual shortages you have mentioned, that is the actual discrepancies, shrinkage in assets, bad loans, or anything of that sort? A. That would take me into the realization statement; is that what you want to go into?

By the Court: Q. No, unless it has some connection with what you have already stated. Let me see if I understand. The books might be incorrect and yet the assets themselves might be intact. That does not often happen, but it might happen. The books might be kept badly, and yet when you came to examine the assets you might find more assets in the vaults than you would have supposed existed from the figures. There are two things you have to consider; first, the books statement, and then the actual assets; they are two entirely distinct things. Now I understand the witness wishes to separate them. A. Well, it would be on the realization statement, that is all.

Q. Have you completed the other branch? A. In summary, yes, in general.

Mr. Clark: It was our intention to call a representative of the Banking Department, following this witness's testimony as to the book discrepancies, to testify as to what was actually found at the time they took possession at the closing of the bank; then have this witness follow with that, and finish up his realization; but he is now prepared to outline to your Honor the manner in which the discrepancies shown on the books were concerned, and that enters into the proof of negligence.

The Court: Well, that is proper.

A. Cash items first began to appear in exceedingly heavy amounts and to accumulate on February 1, 1911. At that time there appears in the paying teller's proof book $3,485.99. This amount continued to increase until it reached, on February 6, 1911, $3,957.16. On February 7, $2,557.16 of these items disappeared from the paying teller's proof, as on that date there appears in the paying teller's proof an even amount, $1,400, of cash items. On February 8, 1911, the paying teller's proof book shows that he was carrying on that day $6,282.40 of cash items, and these items continue to run in his proof of cash daily until March 1, reaching a maximum amount on February 18, 1911, *viz:* $11,885.19, and disappearing from the paying teller's cash on March first, as on that date there appeared to remain in his cash but $1,743.42.

Beginning with March 1st and continuing on to March 18th these items again accumulated until they reached $5,651.40 on March 10, 1911, gradually decreasing until, on March 18, 1911, there appeared to remain in the paying teller's cash $333.39. On March 20, 1911, the paying teller's cash contained $2,935.46 of cash items, and these items continued to accumulate until April 1st, reaching an amount on March 25, 1911 of $4,313.80. That amount appeared on March 25th, there has been an error here in the time, the stenographer's record. On April 1st these items were removed, with the exception of $1,701.50. From April 1, 1911 to April 17, 1911 these items again accumulated, reaching an amount of $3,855.80 on April 11th, and disappearing entirely from the paying teller's cash on April 17th.

Mr. Stiefel: The witness is reading a prepared statement, as I understand it, and am I to understand that this is the result of his own work?

A. This is my investigation.

By Mr. Stiefel: Q. The result of your own personal work? A. My personal investigation. Beginning on April 21, 1911, cash items again appeared in the paying teller's proof book, on that day amounting to $1,403.29, and accumulating until, on April 24 1911, they reached the amount of $6,840.04. On April 25, approximately $5,400 of these cash items disappeared from the paying teller's cash. From April 26, 1911 until May 27, 1911 the cash items appearing in the paying teller's cash did not exceed approximately $700. On May 27th they jumped to $4,206.90, all of which, with the exception of $891.60, disappeared from the paying teller's cash on May 31st. These items again accumulated until, on June 2, 1911, the paying teller's cash contained $1,377.93, which, with the exception of $1.13, disappeared on June 3d. On June 5th the paying teller's cash contained $2,776.67 of cash items, disappearing, with the exception of $139.96, on June 6. On June 8, 1911, the paying teller's cash appeared to contain $1 284.26 of cash items, disappearing on June 9th, with the exception of $469.28. Beginning with June 10, 1911 the items began to accumulate until, on June 12, 1911, they reached the amount of $620.36, and began to diminish daily until, on June 16, 1911, the amount that appears to have been carried in the paying teller's cash was $35.10. Not until June 22, 1911, did they again appear to exceed $400, when the amount of cash items

carried in the paying teller's cash appears to have been $1,185.35, which amount, on June 23, 1911, disappeared entirely. On that day, June 23, 1911, the paying teller's cash appears to have no cash items whatsoever; and this condition continued to exist until June 28, 1911, when $414.23 appeared in the paying teller's cash. On June 29, this amount had diminished to $363.52, and on June 30 disappeared from the cash entirely. No cash items appeared in the cash of July 1st.

Not until July 7, 1911, did cash items appear in the paying teller's cash in amounts exceeding $169.72. On that day, July 7, 1911, the paying teller's cash appears to have contained cash items to the amount of $1,756.72, which amount continued to increase until, on July 11, 1911, they aggregated $2,124.57, and this diminished until on July 15, there appears to have remained in the paying teller's cash items to the amount of $342.85. Beginning with July 17, 1911, they again accumulated until, on July 17, 1911, they amounted to $2,571.33, disappearing, with the exception of $233.05, on July 21. On July 22, they again increased to $1,450.52, decreasing from that date, July 22, 1911, daily until July 26, 1911, when there appears to have remained in the paying teller's cash $15.81. From July 27, 1911, when the paying teller's cash showed cash items to the amount of $24.16, until September 1, 1911, these items fluctuated from day to day, reaching the highest amount on August 31, when, on that day, the paying teller's cash appears to have contained $1,366.08 of such items. On September 2, these items aggregated $2,622.53, and this amount, with the exception of $76.25, disappeared on September 6, 1911. From

September 6, 1911 until September 23, 1911, these items fluctuated, at no time exceeding $261.35, until on that date, September 23, they disappeared entirely from the paying teller's cash. On September 25, 1911, the paying teller's cash appears to have contained $5,543.56 of cash items, disappearing, with the exception of $7, from the paying teller's cash on September 26. On September 29 they again accumulated, aggregating on that date $1,694.40, disappearing entirely from the paying teller's cash on September 30. On October 2, 1911, the paying teller's cash appears to have contained $1,092.50 of these items, which disappeared, with the exception of $100, from the cash on October 3. From that date, until October 6, they continued to accumulate, aggregating, on October 6, 1911, $552.64, disappearing from the paying teller's cash entirely on October 9. On October 11, 1911, cash items again appeared in the paying teller's cash to the amount of $396.60, and continued to increase until on October 14, 1911 they aggregated $1,273.40, disappearing, with the exception of $87.91, on October 16. From October 16, until October 21, these items fluctuated in the paying teller's cash, reaching the highest amount on October 19 *viz:* $985, which, with the exception of $100, disappeared from the cash on October 20. On October 20, the cash appears to have contained $937.50 of these items, which, with the exception of $2.20, disappeared from the cash on October 23. On October 27, 1911, there again appeared in the cash an amount of $629.35, reaching, on October 28, $1,033.06 and disappearing entirely from the cash on October 30. From October 31, 1911, to November 6, 1911, they again accum-

ulated until, on the latter date, they reached the sum of $347.50, which amount disappeared entirely from the cash on November 8. Cash items to the amount of $169.61, appearing in the paying teller's cash of November 9, disappeared entirely from the cash on November 10. On November 11 they again appeared in the amount of $1,468.-10, disappearing on the 13th, with the exception of $153.35. This amount increased on November 14th to $300, and disappeared entirely from the cash on November 15. Until December 8, 1911, these items continued to appear on and off in the paying teller's cash, at no time exceeding $700, when, on the latter date, December 8, 1911, there appeared to be only $28.61 of these items in the teller's cash. On December 9, 1911, this amount jumped to $2,407.53, and disappeared, with the exception of $908.50 on December 11, 1911; this amount disappearing, with the exception of $30. on December 14, 1911. On December 15 there appeared $1,425.42 of these items in the cash, which increased on December 16 to $1,905.56, disappearing entirely on December 19. 1911. On December 20, they again appeared in the cash, in the amount of $1,546.18, and continued to increase until, on December 29, 1911, they aggregated $7,-232, disappearing entirely on December 30 from the paying teller's cash.

On January 2, 1912, they again appeared in the cash, in the amount of $4 448.25, and continued to accumulate until January 9, 1912, when they aggregated $9,094.31, disappearing, with the exception of $2,979.39, on January 10th.

On January 12, 1912, the bills purchased account in the general ledger was under-extended

$10,000, and on that same date, January 12, 1912, the debit or asset side of the general ledger was under-footed $10,000.

On January 13, 1912, the general ledger control account of the M to Z individual ledger was under-extended $10,000.

By under-extending the M to Z ledger, (which is a liability account) $10,000, the under-extension of $10,000 in the bills purchased account, (which is an asset account) was offset, and the ledger, which was $10,000 out of balance on the 12th, was brought back into balance by reason of the falsification in the controlling account of the M to Z ledger.

The controlling account in the general ledger of the M to Z individual ledger remains $10,000 under-stated until January 19, 1913.

The controlling account in the general ledger of the M to Z individual ledger, on January 19, 1912, was over-stated $10,000, causing the controlling account to truly state the liability of the trust company of the M to Z individual ledger.

On this same day, January 19, 1912, the cash book shows a credit to bills purchased, in the amount of $1,822.05. This credit was carried into the bills purchased account in the general ledger, in the amount of $11,822.05, thus adjusting the under-extension made on January 12, 1912, of $10,000 to this account, and causing the account to truly state the asset, *viz:* bills purchased.

On this same date, January 19, 1912, a false charge of $20,000 was made to the Union National Bank, the cash book showing a charge to the Union National Bank of $14,312.27, which was carried into the general ledger account of the Union National Bank in the amount of $34,312.27.

By this false charge to the Union National Bank the previous falsifications of the general ledger, *viz:* in the controlling account of the M to Z ledger and the bills purchased account, each in the amount of $10,000, were shifted to the account of the Union National Bank.

On January 13, 1912, the treasurer's checks account in the general ledger was under-extended $25, and on the same date the certified checks account in the general ledger was over-extended $25.

On January 12, 1912, the cash items again appeared, in the amount of $5,764.59, and continued to increase until January 15, 1912, which they aggregated $7,684.72.

On January 16, 1912, they decreased to $3,292.45, and from that date on to February 3, 1912, they daily accumulated until, on the latter date, they reached the sum of $9,113.02, decreasing on February 5, 1912, to the amount of $4,495.84, and further decreasing on February 6 and 7 until, on the latter date, they appeared to be held in the paying teller's cash in the amount of $2,983.25.

On January 31, 1912, the controlling account in the general ledger of the A to L individual ledger, is under-extended $30,000; and on that same date a false credit in the amount of $30,000 was made to the Union National Bank, the cash book showing a credit to the said bank of $37,712.33, which was carried into the Union National Bank's account in the general ledger in the amount of $67,700.33. This under-extension of the A to L ledger account in the general ledger continued until February 20, 1912 when the controlling account in the general ledger of the A to L individual ledger was over-extended $30,000, thus causing the controlling account to truly state this liability item.

On this date, *viz:* February 20, 1912, the credit of liability side of the general ledger is under-footed $30,000.

On February 21, 1912, the Union National Bank account in the general ledger was over-extended $50,000, and the debit or asset column of the general ledger on this date, *viz:* February 21, 1912, is under-footed $20,000.

On February 23, 1912, the Union National Bank account in the general ledger is under-extended $20,000, thus leaving the Union National Bank account as of this date over-stated $30,000. That condition continued to exist in the Union National Bank up to February 29, 1912.

On February 29, 1912, the Union National Bank account in the general ledger is under-extended $30 000, thus causing this account to truly state the trust company's balance with the Union National Bank as of that date.

On this same date, February 29, 1912, the controlling account in the general ledger of the M to Z individual ledger is under-extended $30,000, and this under-extension in this account continues to remain the same each day until March 30, 1912, when the under-extension is increased to $50,000.

On February 5, 1912, the cash book shows a debit to bills purchased account in the general ledger of $14,948.50. This debit was carried into the bills purchased account in the general ledger as $9 948.50, and on that day the Union National Bank account in the general ledger was falsely debited with $5,000.

On February 6, the cash book shows a debit to bills purchased account of $41,747.75. This debit was carried into the bills purchased account in the

general ledger in the amount of $46,747.75, and on that day the Union National Bank was falsely credited with $5,000.

From February 7th until February 19 the cash items continued to increase until on that date, February 19, they aggregated $8,905.81, decreasing on February 20 to $1,808.96, and increasing, until, on February 23, they aggregated $2,775.86, disappearing entirely from the paying teller's cash on February 24th.

On February 26th, 1912, a credit appears in the cash book to the bills purchased account of $4,034.60. This credit was carried into the general ledger on that date in the amount of $9,034.60, and on that same date the Irving National Bank account in the general ledger is falsely debited in the amount of $5,000.

On February 28, 1912, there appears in the cash book a debit to bills purchased account, in the amount of $2,453.60. This was carried into the bills purchased account in the general ledger in the amount of $7,453.60, and on that date, February 28, 1912, the Irving National Bank account in the general ledger was falsely credited with $5,000.

From February 27, 1912 until March 8, 1912, the cash items were daily accumulating in the paying teller's cash, and on the latter date, March 8, 1912, aggregated $4,918.91, and, with the exception of $1,931.59, disappeared from the paying teller's cash on March 9, 1912.

On March 1, 1912, there appears in the cash book a credit to bills purchased account in the amount of $4,781.92. This credit was carried into the bills purchased account in the general ledger on that date in the amount of $14,781.92, and on

that same date a false debit was made to the Union National Bank in the amount of $10,000.

On March 6, 1912, the cash book shows a debit to bills purchased in the amount of $20,854.63. This item was carried into the bills purchased account in the general ledger in the amount of $30,854.63, and on that date, March 6, 1912, the Union National Bank account in the general ledger was falsely credited with $10,000.

On March 9, 1912, the bills purchased account in the general ledger was under-extended $10,000, and on this same day, March 9, 1912, the Irving National Bank account in the general ledger was over-extended $10,000.

From March 9, 1912, until March 15, 1912, cash items again accumulated in the paying teller's cash until, on the latter date, they aggregated $3,037.50.

On March 16, 1912, these cash items, with the exception of $803.92, disappeared from the paying teller's cash.

On March 18, 1912, there appears in the cash book a credit to bills purchased account in the amount of $16,641.21. This credit was carried into the bills purchased account in the general ledger in the amount of $26,641.21, and on that same date, March 18, 1912, the Irving National Bank account in the general ledger was falsely charged $10,000.

On this same date, March 18, 1912, there appears in the cash book a debit to bills purchased account in the amount of $16,042.75, and on that same day March 18, 1912, this debit was carried into the bills purchased account in the general ledger in two amounts, one of $16,042.75 and the other $5,330.84.

On this same date, March 18, 1912, treasurer's checks was credited $5,330.84.

From March 16, 1912, to March 23, 1912, cash items again accumulated in the paying teller's cash until, on the latter date, they aggregated $2,669.04, and

On March 25, 1912, these cash items, with the exception of $119.53, disappeared from the paying teller's cash.

From March 25, 1912, to March 27, 1912, inclusive, cash items accumulated in the paying teller's cash until, on the latter date, they aggregated $5,272.58, and

On March 28, 1912 these cash items disappeared entirely from the paying teller's cash.

Q. You heard the testimony of Mr. Smith? A. I did.

Q. Will you take the general ledger on April 11, 1912, and assuming that the entries which you find before you were in that ledger, tell us, out of your experience as an accountant and after your investigation of the books of the bank, what the condition was as shown on the general ledger, and as shown on the other books of the bank on that date?

The Court: You are going to take these items up consecutively?

Q. Yes, I am starting with April 11th.

The Court: Starting with the earliest?

Q. Yes. A. In order to establish the true condition as of April 11th, I must start with April 10th. An examination of the general ledger and the original books of entry as of April 10th disclosed that an error and false adjustment on April 2d, consisting of the interest received account

in the general ledger being under-extended $100, and the special department deposits being over-extended $100, still continued to exist on April 10th. The cash account in the general ledger is over-stated $4,000. This $4,000 covers $2,500 over-stated on April first, being check No. 1366, favor of First National Bank of Milburn, New Jersey, for $2,500; it was drawn on March 27, 1912, on the Irving National Bank of New York; it was not entered in the cash book on March 27th or any subsequent date, but was by an irregular entry credited to the Irving National Bank three days later, March 30, 1912, in the general ledger, plus $1,500 credited to the Irving National Bank in the general ledger on this date, April 10th. I found a false or delayed credit to the bonds and mortgage account in the general ledger of $4,000. This item is not found in the cash book under this or any subsequent date of the month of April, 1912, and is not considered by the receiving or paying tellers in making up their proofs of cash for this date, April 10, 1912.

Bills purchased account in the general ledger is over-extended $4,000. The Irving National Bank account in the general ledger is over-stated $1,000.69. This being check No. 1389 for $1,000.69, drawn on April 9th upon the Irving National Bank of New York. The check is not entered in the cash book until April 22, 1912, and is not credited to the Irving National Bank account in the general ledger until that date, April 22, 1912, although the same was paid by the Irving National Bank on April 13 1912. The Irving National Bank account in the general ledger was this date credited with $1,500, which is the amount of check 1377

which was drawn on April 4, 1912, but was not entered into the cash book until April 8th. From April 4th to this date, April 10, 1912, the account of the Irving in the general ledger was over-stated this amount.

Treasurer's checks account in the general ledger was this date, April 10, 1912, credited by check 7103 for $106.15, which was issued on April 6th. A false credit to the M to Z individual ledger account in the general ledger of $50,000. This credit is not found in the cash book, and it was not considered in balancing the cash book on this or any subsequent date in the month of April, 1912. It was not taken into consideration by the receiving or paying tellers in their respective proofs of cash. I established that this item was not passed to the credit of any account in the general ledger on this or any subsequent date during the month of April.

The M to Z individual ledger account in the general ledger is over-extended $100,000.

The A to L individual account in the general ledger remains the same as on April 1st, namely, $1.00 in excess of the aggregate of the balances to be found in the A to L individual ledger. That is, the liability as shown in the general ledger exceeded the actual liability of the bank by one dollar.

The M to Z individual ledger account in the general ledger is $20,000 in excess of the aggregate of balances of the M to Z individual ledger. The credit or liability column of the general ledger is under-footed $100,000 both sides of the cash book. The general cash book on this date, April 10, 1912, is under-footed $200. Those were the irregularities existing on the general ledger as of April

10th, which naturally affected more or less the condition of the books as of April 11th.

On April 11th the error and false adjustment referred to on April 2d, which was $100 under-extension of the interest received account and $100 over-extension of the special deposits account, are adjusted on this date, April 11, 1912, and so far as these two items are concerned the accounts affected are now correctly stated. The adjustment was made by irregular entries being made directly in the general ledger coming from no original book of entry.

The cash book balance on April 10th, namely, $27,648.25, that is the balance at the close of April 10 was carried forward to April 11th as $31,648.-25. The balance at the close of April 10th was brought forward and showed as the amount opening on April 11th, $4 000 in excess of the true balance. The cash account in the general ledger occurs on this date with the balances shown by the cash book and with the actual cash on hand as shown by the receiving and paying tellers' proof books, but on this date a false charge of $4,000 in currency was made to the account of J. R. Clare in the A to L debit book and cash book. This $4,000 was credited back to J. R. Clare on May 2, 1912, but was not entered in either the credit book or the cash book.

Bills purchased account in the general ledger remains over-extended $4,000, the original over-extension occurring on April 10th. A credit to bills purchased account in the general ledger is $30,000 less than the amount shown in the cash book and comprehended in the cash balance of this date. A debit to bills purchased account in

the general ledger is $20,000 in excess of the amount shown in the cash book and comprehended in the cash balance of this date. The result of the over-extension of $4,000, the $30,000 less credit and the $20,000 excess debit, makes an over-stated amount of bills purchased on April 11, 1912, in the amount of $54,000.

The Irving National Bank account in the general ledger is over-stated $597.09, made up as follows: check 1389, issued April 9, 1912, but not entered in the cash book or credited to the account of the Irving National Bank until April 22, 1912, $1,069.00; check No. 1464, issued May 25, 1912, but entered in the cash book and credited to the Irving National Bank two months previous, namely, March 29, 1912, this check entered on cash book two months previous to its issue, $403.60, or a net difference of $597.09. On this date, April 11, 1912, $17,500 of drafts were kited through the H. B. Claflin account as follows:

Draft No. 1181 on the New York State National Bank of Albany, $7,500.

Draft No. 1182 on the same institution, New York State National Bank of Albany, $10,000. Total $17,500.

The A to L individual account in the general ledger remains the same as on April first. On April 1st it was one dollar in excess of the aggregate of balance shown by the individual ledger itself.

The M to Z individual ledger account in the general ledger is under-extended $50,000.

The M to Z individual ledger account in the general ledger is $30,000 less than the aggregate of balances of the M to Z individual ledger itself.

Those are the differences existing as between the general ledger and the true conditions on April 11th.

Q. Will you tell us now what you found as to the condition on December 14, 1912?

Mr. Fairlie: Has the witness now completed that?

A. I completed as far as the general ledger is concerned. If you want the bank accounts I will give you those.

Q. Have you anything more to add as to the condition of the general ledger on April 11, 1912? A. I reconciled the bank accounts as of that date and I found that I was unable to reconcile the Union National Bank within $826.74, this item being a deposit on April 9, 1912, not entered in the books of this Trust Company until May 9, 1912. I was unable to reconcile the Irving National Bank account of the City of New York by an amount approximately $600, being made up to two items: check No. 1389, issued by the Trust Company on April 9, 1912, but not entered into the general cash book until April 22, 1912, eleven days later than this date of examination. There was an error also in deposit on April 2, 1912 of fifty cents; check No. 1464, which was issued on May 25, 1912, and entered in the cash book on March 29, 1912, two months earlier; $403.60; the difference between the two items amounting to $597.09.

Q. Have you finished telling us what you found as to the condition on April 11, 1912, and, if so, kindly tell us what you found on December 14, 1912? A. As in the case of April 11th I am compelled to go back to December 13th in order to show the conditions existing on the 14th. On De-

cember 13th the National Iron Bank of Morristown, New Jersey, was under-extended $8,000. The paying teller's reserve cash in the proof book is over-stated $50 by a false addition, false interlined debit entry to the Irving National Bank of $98,000. The A to L ledger account in the general ledger is under-extended $100,000. The liability or credit footings on December 13th are over-stated $100,000. On December 14th the Irving National Bank balance was under-extended $98,000.

Q. $98,000? A. $98,000. Collateral loan was over-extended $100,000. Orange National Bank account was over-extended two cents; the proof books showing that there is $1,534.54 of silver, and the ledger, general ledger taking it in as fifty-two cents instead of fifty-four cents.

Q. Is it possible for there to be such an amount in silver, fifty-four cents? A. No. A debit of $19,000 to the A to L ledger does not appear in the individual debit book on this or any subsequent date of December, 1912; it is not considered by the tellers in proving their cash for this date. A credit of $2,000 to the A to L ledger does not appear in the individual credit book on this or any subsequent date of December, 1912; it is not considered by the tellers in proving their cash for this date. The A to L ledger account is over-extended $100,000 on December 14th. We were unable to prove, or rather to reconcile the Irving National Bank account on this date by $537.31, being the check issued to George E. Price on January 8, 1913, nearly a month later, being entered and credited to the bank on this date, and was carried as an outstanding check on this date, December 14,

1912. An item of $49.14 entered on the cash book on December 10th, but not on the bank statement until December 16. An item of $101.50 appearing on the bank's books on December 13th, but not appearing on the corresponding bank statement until December 16.

We were unable to reconcile the New York State National Bank of Albany by $514.60, being an item on November 6, 1912, of $256.30 entered against the Fourth Street National Bank of Philadelphia instead of the New York State National Bank, and on December 10th the same amount was taken into the New York State National Bank but no entry was made on the bank statement. There was a two dollar difference in the deposit of December 14, 1912 in this bank.

We were unable to reconcile the bank account of the Fourth Street National of Philadelphia by $3,587.38, this being made up of check No. 571, not entered on the books of the Roseville Trust Company, amounting to $4 000. Less credits entered on the books of the Trust Company, which did not appear upon the statement of the corresponding bank, namely, an item on November 6th of $256.30, and an item on December 10th of $256.30, or a total of $512.60, or a net difference of $3,487.40. There was an error in the deposit on December 2d of two cents, making the net amount $3,587.38. Those were, generally speaking, the differences on December 14th.

Q. Will you tell us what you found on May 21, 1913?

Mr. Clark: Take the ledger page of May 21st and talk from it as to the facts which are apparent on the face of the ledger.

A. On May 21st I found that the A to L individual ledger was under-extended $100,000. That the M to Z individual ledger was under-extended $100,000. Assuming in both instances that the figures that were originally there were 2's in lieu of 1's in the place of the 100,000. The day before showing alterations also from 1's to 2's, and the day before that, on May 19th, showing an alteration from a 1 to a 2. The bills purchased account had a fictitious credit of $17,900, which was carried into the A to L individual deposit ledger on May 22d.

Q. Will you explain what you mean by that. Do you mean that the first part of it referred to May 21st? A. May 21st.

Q. And then what happened? A. It was under-extended, or rather a false debit was placed in the bills purchased account on May 21st, and a false credit placed in the individual A to L ledger account on May 22d.

Q. How are those false debits represented on the face of the ledger, by what kind of figures? A. Inserted figures over the top of the original figure.

Q. What happened to that 17,900 on the 22d, as you just told us? A. It was falsely credited to the A to L individual ledger, and a false debit was made to the bills purchased account adjusting in the bills purchased account the false credit made on May 21st of $17,900. If the figures appearing on May 21st in the A to L and M to Z ledgers were originally $200,000 in place of $100,000, the footing on that date was $200,000 under. As they now appear, $100,000, the footing is correct.

Q. What is the relation of that one hundred odd thousand in each ledger with respect to the ag-

gregates in the individual demand ledgers? A. Just $100,000 in each instance short of the aggregate of deposits.

Q. How do you know that? A. On May 21st we have taken off the individual ledgers.

Q. You mean to say that you have made an actual inspection of each and every one of the three thousand or more accounts and taken an actual footing of those accounts as of that day? A. Yes, we have taken an adding machine footing. I think on May 21st that was about all that was in this.

Q. How were the bank accounts on that day? A. The Irving National Bank account, there was a legitimate difference in the Irving National Bank. The Fourth Street National Bank account of Philadelphia we were unable to reconcile within $1,000, and we found this to be an under-stated amount in the general ledger. On the National Shawmutt Bank of Boston, Massachusetts, we had a difference of $2,000, or we were unable to reconcile within $2,001.33. The actual balance that we found to have been in that bank being $2,785.12, whereas the general ledger showed a balance there of $4 786.45. We were unable to reconcile the New York State National Bank by $4,115.88. These items were check No. 1547 which was issued on May 21st but not taken in the general ledger account of this bank until May 22d, and an item of $115.88 of which we were unable to find any record whatever.

Q. Now you have told us of differences between the balances shown on the general ledger representing the accounts in the depository banks on examination days, as contrasted with the actual

balances in the depository institutions, and I ask you to tell us whether or not in your opinion those irregularities and that difference between actual and real bank balance that you have pointed out might have been discovered by an examination of the accounts, papers and books of the Roseville Trust Company by an ordinary layman in the ordinary course of business?

Mr. German: I object.

Mr. Hinds: That is the question that I referred to, and I have taken it almost verbatim from the record on appeal in the case of Campbell vs. Watson, which is a case remarkably in point, where the same facts existed, and which after argument was allowed by Vice Chancellor Pitney.

Mr. German: It seems to me this man would have to know what sort of an examination this layman made, in order to answer that question.

The Court: I think the difference between an ordinary layman—and by that I mean ordinary business man—and the expert accountant is a matter of degree rather than a matter of essential difference. The ordinary layman so called, would take longer in discovering these things than the expert would; if he had any familiarity with business methods or books he would probably be able after a lapse of time to find out the irregularities. Vice Chancellor Pitney, as we all know, was himself a bank official, for many years he was president of the Iron Bank in Morristown, and had far greater knoweldge of banking matters than I have,

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indeed he had I presume a very comprehensive knowledge, and if he has seen fit to allow that question I shall allow it, subject of course to objection, and subject to be dealt with hereafter if it requires to be dealt with. I will allow any question which Vice Chancellor Pitney allowed for the reasons I have stated, and for the additional reason that it is the practice of the Court always to allow a doubtful question to be answered; that is to say, a question as to which there can be legitimate doubt in the mind of a Judge as to whether it is or is not competent; it will do no harm at all to have that question on the record and to have the answer on the record; if the question is improper the answer will be disregarded when it comes to the examination of the case.

(Question read.)

A. Yes.

Q. Now I ask you, in the language of the Vice Chancellor, whether or not in your opinion there would have been any difficulty for an ordinary business man to ascertain and discover the irregularities which you have pointed out in the depository accounts on the three examination dates which you have testified to?

Mr. German: The same objection.

A. Would it have been possible for them to discover the irregularities?

Q. Would there have been any difficulty for any ordinary business man? A. Certainly not.

Q. Would there have been any difficulty for any ordinary business man to have discovered any of

the irregularities which you have pointed out as existing on the face of the general ledger on the several dates of the examinations? A. They were apparent on the general ledger.

Q. What is your answer? A. They are apparent, anyone looking at them could see them.

The Court: Yes, anybody could see them; they are figures which should have excited the attention of anybody on the first inspection, but the evidence is that at the time when those books were examined those erasures did not appear, they were put on between the time of the first examination and the time of the second examination for the purpose of deceiving the committee, and the question will be whether they ought to have made two examinations.

Mr. Congleton: Is it understood that all of this testimony is taken subject to objection, so that we will not have to object to each question?

The Court: Oh, yes.

Mr. Congleton: It won't be necessary to object to each question?

The Court: No.

Mr. Clark: I want to correct an error that your Honor has made. The evidence is that there were only two instances on this ledger where any alterations were made after they were first seen by the examining committee.

The Court: Well, I did not specify any number.

Q. Now will you tell us what condition you find actually existed, as shown by the several books

of the bank, on the fourth day of June, 1913, as contrasted with the statement of condition as shown by the report to the Banking Department on that day. You need not tell us anything of irregularities on other dates, but just summarize the actual condition as you find it, as distinguished from wherein it was found? A. The report to the Banking Department made as at the close of business on June 4, 1913, stated that the cash on hand in the Roseville Trust Company was $51,943.36. The general ledger, the cash book and the tellers proof books of the Roseville Trust Company show that at the close of June 4, 1913, they actually had $15 943.36 of cash.

Q. Before you go from that question. Do you mean that each one of them showed that, or taking all in conjunction they showed it? A. Each one of them showed that—I beg your pardon, each one doesn't show that. Taking the receiving and paying tellers proof books in conjunction they will show it; the cash book shows it, and the general ledger. The cash book shows $35,652.31. The general ledger shows $35,652.31. But in the statement to the Banking Department the items of actual cash, and what is known as cash items are separate and reported separately. Now the cash, the actual cash in the bank, as shown by the proof books, was $15,943.36, and the actual cash reported to the Banking Department was $51 943.36, a difference of $36,000. The cash items as shown by the proof books of the Roseville Trust Company amounted to $19,708.95. The cash items reported to the Banking Department was $728.31, a difference of approximately $19,000. The demand deposits, you don't want me to go into the under-extensions or over-extensions?

Q. No, just tell us the result. What were the demand deposits, as shown on the individual demand ledgers, and what were they on the report? A. The report agreed with the ledger, but the ledger was over and under-extended to make it agree.

Q. Then tell us what the right amount was? A. The right amount of demand deposits—

The Court: You mean the general ledger?

A. The general ledger was over and under-extended in these cases to make it agree, and the amount was $407,048, which was the amount.

Q. Now what about the other items, bank accounts, and so on? A. The bank accounts, the New York State National Bank of Albany was out of proof $5,171.05.

Q. You mean that is the difference between the general ledger balance and the actual balance? A. The actual balance in the bank was $4,076.71; the general ledger balance was $9,247.76.

Q. Now can you tell us what the aggregate reported to the Banking Department of depository accounts was as compared with the aggregate that actually existed in the institution, have you made that comparison? A. I haven't made the calculations but I can do it.

Q. Now look at your notes and tell me what is the correct amount?

The Court: He has not answered your last question.

A. I have it here now.

Q. Tell us. A. The amount reported to the Banking Department exceeded the amount shown on the general ledgers by $75,751.90.

Q. Now referring to bank accounts with deposi-

tory banks? A. That includes the cash items, by the way; $63,732.54 is the difference in the banks.

Q. Is what difference? A. That is, there is that much less shown on the books of the Roseville Trust Company than was reported to the Banking Department.

Q. Could that difference have been observed by a mere inspection of the general ledger itself? A. It could have from the day before.

Q. Now tell us what the actual aggregate as shown by individual demand ledgers was on that date of the individual demand deposits, not as they appeared on the general ledger but as they appeared aggregating the individual demand ledgers? A. The demand ledgers, the general ledgers show $274,482.58, and the correct amount was $454,482.58.

Q. What was the amount shown on the report? A. The amount shown on the report was $407,048.

Q. Have you got the report there? A. Yes. I beg your pardon, the demand was $274,640.68.

Q. And what was the difference between the amount of demand deposits as reported to the Banking Department on June fourth, and the actual amount? A. $179,841.90.

Q. Was there any difference between the amount of time deposits or savings deposits reported to the Banking Department, and the amount as shown by the individual special deposit ledger? A. Yes, there was a difference of $2,000.

Q. Was there any difference between treasurer's checks, as reported to the Banking Department, and as it actually existed, and, if so, explain it? A. They reported to the Banking Department as having checks outstanding to the amount

of $274.83; whereas the ledger showed an overdraft or a debit balance in the treasurer's check account, which is, by the way, an impossible condition, of $1,725.17, or a difference of an exact $2,000.

Q. Why do you say that is an impossible condition? A. Because at any time there is no liability existing against the bank, there is no balance in this account.

Q. Now will you make a similar comparison between the report of April 4, 1913, to the Banking Department and the actual liabilities and assets of the bank as shown on its books, confining yourself only to those items which show a discrepancy, if any? A. In the report to the Banking Department by the Roseville Trust Company as at the close of business on April 4, 1913, they reported cash in the amount of 021,964.44; whereas the actual cash as shown by the books of the Trust Company was $14,548.08. They reported cash items in the amount of $415.80; whereas the actual cash items in the Trust Company was $7,832.16.

Q. How about the demand deposits? A. The demand deposits were reported to the Banking Department as $251,307.87; it was shown on the ledger as $251,169.77, but the actual amount was $433,089.13, or there was reported to the Banking Department in an amount less than the actual amount of $181 919.36.

Q. Was there any difference on that day between the amount as shown to the Banking Department and the amount on the very face of the general ledger? A. Yes.

By the Court: Q. What was it? A. The amount reported to the Banking Department was $251,-

307.87, and the actual amount shown on the face of the ledger was $251,169.77.

Q. Approximately what difference? A. The difference was $138.10.

Q. Were there any other discrepancies between the report of April 4th and the actual condition of the bank that you found, besides what you have told us? A. No, that covers the entire difference as between the general ledger and the demand ledger.

Adjourned until Wednesday 25, 1917.

April 25, 1917.

RAYMOND E. SMITH, re-called:

Cross-examination by Judge Collins:

Q. Mr. Smith, when did you engage in banking? A. 1892 I think it was.

Q. And from that time until the close of the Roseville Trust Company you were constantly engaged in banking? A. No, with the exception of about five years, I was traveling salesman for about five years.

Q. What years were those? A. I think about 1898 to 1903, something like that.

Q. Were you during the time that the Roseville Trust Company was in existence familiar with banking business and the business of trust companies? A. Yes, sir.

Q. Were you familiar and are you now familiar with the system of conducting business in trust companies? A. Yes, sir.

Q. Was or was not the system of the Roseville Trust Company that in common use with trust companies?

Mr. Hinds: If your Honor please, I object unless counsel directs the witness's attention to some particular phase of the system.

Judge Collins: I am going to have him state the system.

Mr. Hinds: I object also on the ground that it is immaterial and irrelevant. I think your Honor has already ruled on that point.

The Court: Well, you may cross-examine as to his ability to speak as an expert.

Mr. Hinds: I do not think it has been shown that the witness has any familiarity with National Banks; I did not hear him testify to that.

The Court: You may cross-examine as to his ability to speak as an expert on this matter.

Mr. Hinds: As to other trust companies?

Q. Trust companies generally? A. Why, yes, sir, our system was very much the same as used in other trust companies.

Mr. Hinds: I ask that that answer be stricken out; he has not yet qualified.

The Court: Strike that out. Now you may cross-examine on this point. They are making this witness their own witness and you are cross-examining.

By Mr. Hinds: Q. Mr. Smith, did your experience in other banking institutions than the Roseville Trust Company include any in trust companies? A. No, no practical experience in any Trust Company before the Roseville Trust Company.

Q. Was the Second National Bank of Orange where you said you had been employed, was that an institution where there was only one active officer? A. No, sir, there were two there I believe.

Mr. Hinds: Then, your Honor, I object to any questions as to customs in other banking institutions, it having been shown that one was a National Bank, where the checks and balances must have been quite different, there being more than one active officer, and he not having been employed in any trust companies.

The Court: I do not think he is qualified yet to speak on the subject.

By Judge Collins: Q. You say that you were not actively employed in any other trust company than this, but did you study the subject of the business of trust companies? A. I did, yes, sir.

Q. I now ask the question.

The Court: I think the witness must have some more familiarity with this. If the witness knows and has studied the subject of checks and precautions taken by other trust companies to insure the safety of the fund, if he has made that a study why perhaps he can speak on that, but unless he has made that a study I do

not think he is an expert. He has been in this trust company, he knows what checks there were on his own work, but it does not appear that he has given the subject any study with regard to other trust companies.

Judge Collins: My question was if he had studied the system of conducting business in trust companies.

The Court: No, not the business of trust companies, but whether he has studied the subject of checks and precautions, checks upon the executive officers or precautions taken to insure the safety of the funds.

Judge Collins: Probably we are talking at cross purposes, counsel and myself and the Court: I was not going into that. All I wanted to show was that they have an executive committee, that the executive committee meets regularly, meets weekly, that the reports of transactions are reported to that committee and passed upon by them, their minutes are kept, their minutes are read to the board of directors, together with a list of the transactions that have occurred during the time.

The Court: I think you will have to qualify the witness. If the witness knows what the course of procedure was in other trust companies, I presume a study of the subject would make him a competent witness, but if he has not studied that subject why I do not think he is any more competent to speak than anybody else.

Q. Have you studied the subject? A. I have, yes, sir.

Q. Now will you answer the question?

The Court: You may find out in what way he has made a study of the subject.

By Mr. Hinds: Q. What has your study consisted of, so far as it has to do with the conduct of executive committee meetings and the other matters recited by counsel in his last question? A. I gained most of my knowledge from other institutions, other trust companies, I made inquiries as to their methods, holding meetings, etc., and I got my ideas from others.

Q. What others? A. There were two or three that I called on, I called on Mr. Shackelton of the Fidelity Trust Company quite a little to get points on various subjects relative to trust companies.

Q. Any others? A. I also called on the treasurer of the Essex County Trust Company in East Orange, Mr. Condict at that time was the treasurer.

By the Court: Q. What did you inquire about, as far as he was concerned? A. As I remember it now, I asked him what the principal duties of the executive committee were and how often they met, and also looked over the books, the kind of books they used in their institution, and I found the system of books used was practically the same as—

Mr. Hinds: I object, your Honor.

Judge Collins: You should not interrupt an answer. You may move to strike it out.

Mr. Hinds: I wish to interrupt if I

hear an answer coming which is clearly unresponsive and objectionable.

Judge Collins: There is no jury here.

The Court: Well, I do not think the witness's last statement is competent.

Judge Collins: Well, then it can be stricken out, but what I am protesting against is counsel breaking into the answer.

The Court: Well, he broke into the answer at a point where the witness was diverging from the question.

Mr. Hinds: I have no further cross-examination, but I suppose I may now make my objection, first on the ground that the witness is not qualified as an expert, having inquired from three trust company officials; and in the second place as immaterial and irrelevant. Even if he were shown to be an expert on custom in trust companies these defendants and this particular defendant are charged with direct violations of a legal duty, and no showing of custom, even if it existed, could act in the slightest way as a matter of defense.

Judge Collins: I do not claim it could.

Mr. Hinds: Furthermore it would be part of their *prima facie* case, even if it were relevant, which it is not.

The Court: My difficulty about it is that he has not shown that he is qualified to speak on any subject so far, except how often executive committees meet.

Judge Collins: And what was the course of business before the committee.

The Court: No, that is all I heard from the witness.

Judge Collins: Well, I had not finished my re-direct-examination, if you may call it so.

The Court: If he wishes to speak merely as to the course of procedure, why I do not understand that any objection is made to the course of procedure; I have not as yet heard any objection on the score that the executive committee did not meet, or on the score that the examining committee did not meet; the objections are of a different character; the objections relate, as I understand the case, to whether or not the committees and the trustees in the discharge of their duties were diligent; not that they did not meet, but the objection is that when they did meet they did not properly discharge their duties. Now if this witness knows nothing more, and made no inquiries as to anything more than the course of procedure it seems to me that the evidence is irrelevant, it does not touch the issue. I supposed you were going to call this witness on the question of what checks were put upon officers in these companies, but I understand you to disclaim any intention of doing so; that will open a wide inquiry, and I do not know whether it is likely to result favorably to you.

Judge Collins: I did not intend to go into that at all.

The Court: Then as far as the mere question of procedure is concerned I will

overrule the evidence because it is immaterial, does not touch the issue. If I have made a statement too narrow as to the position of the complainants why I desire to be corrected, but as I understand the issue it is as I have stated it, not that the executive committee did not meet at the proper times, not that the examining committee did not meet at the proper times, but that when they did meet they did not properly discharge heir duties.

Judge Collins: My client was not on the executive committee at all, so I am not concerned with that.

Examined by Judge Collins:

Q. Did you make inquiries of other people besides those that you have named? A. Not that I remember directly, no, sir.

Q. Did you consult with the Commissioner of Banking and Insurance or his examiners? A. Not before we organized.

Q. I don't mean before you organized, nor was my other question limited to a point before yiur organization, any time during the organization, in other words, to learn the general course of business of trust companies? A. I did, yes, I procured copies of by-laws of two or three different trust companies and looked them over, and we adopted—

Mr. Hinds: I object, your Honor, the expression "adopted" shows it is going to be irrelevant.

The Court: No, let him answer.

A. And I believe we adopted the by-laws as adopted in one of the trust companies here in Newark.

Q. Now coming to the executive committee, the by-laws tell what they are and what they are to do, and I suppose they will show when they met, but I ask you just generally as leading up to another subject, whether it was the rule for the executive committee to meet every week? A. Yes, sir.

Q. Now what did you lay before the executive committee at those meetings? A. I gave each member of the executive committee a list showing notes purchased; I also gave them a copy of the statement of the institution.

Q. You say notes purchased; loans made too? A. Well, bills purchased were always on a list because there were several of them.

Q. Did you report loans that had been made on collateral or otherwise? A. Yes, sir, but not on that same list.

Q. No, not on the list, but you reported them? A. Reported them.

Q. Did the committee then act upon those matters? A. Yes, sir.

Q. And was the action noted by you in minutes of the meeting? A. Yes, sir.

Q. Correctly noted? A. Yes, sir.

Q. Correctly recorded? A. Yes, sir.

Q. The directors met once a month, I think? A. Yes, sir, once a month.

previous meeting of the board of directors? A. The general business that was transacted during the month as given to the executive committee each week.

Q. In other words, the minutes of the executive committee were read to the board of directors? A. Yes, sir.

Q. And of course I take it the minutes of the previous meeting of the board of direc-
Yes, they were also read.

Q. Were those minutes of the executive committee as reported to the board of directors correctly read? A. Yes, sir.

Q. Were the minutes of the board of directors correctly kept? A. I think so, yes, sir.

Q. I now call your attention to the examination of the institution by an examining committee appointed under the by-laws; there was such an examining committee, as I understand the by-laws? A. There was, yes, sir.

Q. And they could meet at their pleasure or at certain limited—I have forgotten—every six months they had to meet. Now were you familiar with the work of examining committees in financial institutions? A. I was.

Mr. Hinds: I object on the ground that it is irrelevant and immaterial, even assuming that he is shown to be highly familiar and qualified it cannot affect these issues at all.

The Court: The work of the examining committee is prescribed by the by-laws.

Mr. Hinds: And by statute also, your Honor.

Judge Collins: I want to prove by him that it is the fact in all nancial institutions that they divide up the work. In other words, an examiner of a State institution, I mean a banking examiner's office alone has got to do it all, but an examining committee divide up the work, one or more

count the cash, others go over the books in certain ways, others communicate with out-of-town banks, depository banks, others, as Mr. Dunn did, go over the commercial paper and check it off. In other words, they divide up the work. I think it is legitimate for me to prove that that is the universal custom in examining committees.

The Court: If the witness knows.

Q. Do you know the method or the conduct of examinations of banks by examining committees?

The Court: Well, of trust companies.

Q. Of trust companies? A. I do not, except as it was conducted in our own trust company.

Q. Do you know as it was conducted in the banks you have been connected with? A. Yes, sir.

Q. Now is there any substantial difference—

The Court: Well, he has only been connected with one bank.

Q. Is that all? A. Two others, the Orange National and the Second National Bank.

Q. Is there any difference between the examination of the affairs of a National Bank and those of a trust company?

Mr. Hinds: I object.

The Court: I do not see any reason why he should not answer that question.

A. You mean in the system used?

Q. Of examining, yes? A. Not to my knowledge, no.

Q. Now what is the practice of examining committees of banks and trust companies as to dividing up the work between them?

Argument

Mr. Hinds: I object on the following grounds: First, that even if there was a practice, even if he could state it, and even if it were otherwise relevant as to how the work should be divided up, it has nothing to do with the division of the responsibility. We are charging them with violation not only of the by-laws but of that part of the by-laws which expressly refers to the statute, section 14 of the Trust Company Act, and expressly provides the duties. Now where a statute provides duties specifically, certainly it is immaterial to show what may or may not be the practice as to whether other institutions observe the statute.

Judge Collins: What is the language of the statute to which you allude?

Mr. Hinds: The statute does not provide for any division of responsibility.

Judge Collins: It says: "The board of directors of each trust company shall from time to time appoint six members an examining committee, whose duties shall be to examine the condition of the company at least once every six months, or oftener if required by the board."

Mr. Hinds: Read the rest.

Judge Collins: "and such committee shall after each examination forthwith report to the board, giving in detail all items included in the assets of the trust company which they have reason to believe are not of the value at which they appear on the books and records of the company,

and giving the value in their judgment of each of such items; and the board shall cause said report to be recorded in the minute books of the company." I see nothing whatever in that language that makes it a legal duty for all the committee to do every bit of the work, it would be impracticable in the nature of things; all three must not count the money together, one take the bills and one take the gold; they would all have to do everything, and that is not the practice, nor is it common sense, and all that they have to do in this clause that he asked me to read, this subsidiary clause, is to report the assets that they think were not of the value as appeared on the books.

The Court: I will admit that question if it is limited to the subject of dividing up the work.

Q. That is all I am asking. Answer the question? A. It was in the different banks I was connected with.

Q. And how, in a general way, did they divide up?

Mr. Hinds: Same objection, no division of responsibility.

Q. I want to know the facts. A. Two men would count the cash together, and two would usually take the bills purchased or the bills discounted which there were then in National banks, and others would have the collaterals owned by the bank, and collateral loans also, etc., and others would look over the ledgers and prove up the bank statement.

Q. Is there a chairman of the committee? A. I think there always has been, yes, sir.

Q. And I presume that also someone would inquire of depository banks as to the condition of their balances? A. Yes, sir.

Q. Generally by letter? A. Yes.

Q. And generally a day or two or two or three days after the examination at the bank itself? A. I don't remember that.

Mr. Hinds: I object again, and on another ground now. The witness is obviously testifying beyond his actual knowledge in any particular institution. It has not been shown that his position in any of those other institutions was such that he could have a detailed knowledge of the precise operation of each examining committee.

The Court: It seems to me now that you are going too far; you are getting evidence that is pure hearsay, as to what in the case of two banks certain members of the examining committee did with respect to getting balances in foreign banks.

Q. Mr. Smith, you have said, and we all agree, that it is necessary in examination of the bank's affairs to inquire as to the deposits in other banks. Does it make any difference whether the inquiry is made on the same day and allowance then made for items in transit, or whether the inquiry is made of a later day so that the items in transit will be included in the report from the other banks?

Mr. Hinds: I object on the ground that there is an assumption in the expression

"so that," counsel has particularly put into his question an assumption that the items in transit will have been shown on the balance of, we will say, December 14th.

Question admitted.

Q. (Question read.) A. In order to prove the balance as shown on the books at the close of business on the day of the examination it would be necessary to have a statement from the various correspondents showing the balance due us or due the bank on that particular day at the close of business; it would also be necessary to get an actual proof to have a statement of all items received the following day by that bank, that is, received from us as their correspondents and all items that is received from them on the following day that was debited to us on the day of the balance.

Q. Then would it be more practicable to get the information by delaying a day or two before making the inquiry of the corresponding banks?

Mr. Hinds: Which information?

A. It would be, provided they stated the balance as shown at the close of business of the day of the examination.

Q. That is what I mean. Now we will come to Mr. Dunn. I think you kindly explained the last time I was here about the misapprehension—and my friends very frankly corrected the misapprehension—that occurred from your having been called upon to read a list of checks that were in box 55 and you read the name of Mr. Dunn, but you corrected that inference by saying that there were no such checks of his there. Now,

gentlemen, will you hand me the two little papers that were there.

Mr. Clark: I have sent to New York for them, and they will be here in a half hour about.

Q. You saw them, did you not? A. I don't know whether I saw them the other day or not; I have seen them.

Q. A little slip, I think in your writing? A. Yes, sir.

Q. And said "Dunn" on it and "charge" or something to that effect? A. There were other items on the slip, as I remember it, as well, it was simply a charge slip.

Q. And something that you had charged up against Mr. Dunn's account? A. No, it was a charge that was held in the cash and never charged against Mr. Dunn's account, as I remember it.

Q. He had nothing to do with it, had he? A. No, sir.

Q. To be frank, it means you took and manipulated his account because it was a good account that would reach the end you were driving at? A. It means on the face of it that in case it was necessary to charge this up I had an account to charge it up against.

Q. Although the man himself had not drawn against the account? A. No, he never had drawn those checks.

Q. He always kept his account good? A. Yes.

Q. He never was overdrawn after he was director of the bank at all? A. Never to my knowledge, no, he always had a good account.

Judge Collins: I would like the little pass book.

Mr. Clark: Well, we have sent for that.

Q. You saw a pass book, you remember the one that had five thousand apparently interlined, you recall that? A. I don't think I saw that.

Q. Well, there was produced here a little bank pass book professing to be that of Mr. Dunn's. Do you say you did not see it here? A. Since this Court has convened? No, sir.

Q. You have seen it, however? A. I have seen his pass book at times, yes, sir.

Q. I mean you have seen the one that was produced here, you have seen it during the time that the bank was in operation? A. Yes, sir, I have seen Mr. Dunn's pass book several times.

Q. What I want to direct your attention to is that there were two pass books, is not that a fact; I may perhaps refresh your memory; no dispue about it; perhaps our friends don't know it; is it not a fact that the pass book that was originally opened in Mr. Dunn's account was lost or mislaid, or at least he was so informed, and a duplicate issued to him? A. I have a recollection to that effect, I think there was a duplicate issued to Mr. Dunn.

Q. And from that time on that was the pass book that he used? A. I think so.

Q. Didn't you keep the other one, didn't you find it or at least have it and keep it? A. My recollection is that pass book was later found in the institution.

Q. The old original pass book? A. Yes, sir.

Q. Do you know where the duplicate one on which he transacted his business down to the close of the bank is now? A. The duplicate?

Q. Yes, the duplicate. Well, I say a duplicate, it would be a duplicate down to the time it was started, I mean it would be a duplicate down to the time he began to make new deposits on it, but after that it would not be a duplicate, would it, unless you entered in the original items? A. No, it would be his pass book then.

Q. It would be his pass book? A. Yes.

Judge Collins: Now I would like that pass book.

Mr. Clark: You shall have it later, as soon as it arrives.

Judge Collins: The pass book they had here was the original pass book that had been lost or mislaid and he had a duplicate, and the one on which he conducted his business is the other one that the witness hasn't seen yet. I want them both.

The Court: What charge do they make in reference to that?

Judge Collins: You remember on the pass book that was here there were some erasures and there was also an interlineation.

The Court: Do they make any point on that?

Judge Collins: I think they did but I imagine they do not now.

Mr. Hinds: The only point was not that Mr. Dunn had been guilty of anything at all, but that on his own pass book were indications that he should make an inquiry into how the bank was being conducted.

Judge Collins: But that was not the pass book he was using.

The Court: Do you still insist upon that?

Mr. Clark: Oh, yes, if your Honor please.

The Court: Then their inquiry is perfectly regular.

Mr. Clark: Yes, and just as rapidly as the train can get that pass book here, which was kept in a locked folder by the accountant and happened to be taken away over the recess with other papers, you can have it. So far as a duplicate pass book is concerned we never heard of it until Mr. Smith now says he believes there was one.

Judge Collins: Oh, there was, and Mr. Dunn sent it to the bank. Now they intimate that they haven't got this duplicate. There was such a thing, and your Honor knows that is the one he dealt with and not this other one. They claim that five thousand dollars was a collateral loan, and he ought to know he hadn't any such collateral loan.

The Court: Well, as soon as the book comes he can explain that.

Judge Collins: Yes, Mr. Dunn can explain.

The Court: Where is the duplicate?

Judge Collins: It was sent by Mr. Dunn to the banking department and balanced.

Mr. Clark: This would be more properly a matter of the affirmative case for this particular director; we did not ask

Mr. Smith a single question with regard to the Dunn pass book.

Judge Collins: I am only enlightening the Court as to what the situation was. That is all excepting the pass book when it comes.

RE-DIRECT-EXAMINATION by Mr. Hinds:

Q. On cross-examination you referred generally to what is necessary in order to reconcile the depository bank account, and you said it was necessary to get advice a day or so after. Now in order to make it perfectly clear I ask you whether it is not necessary either to make two separate inquiries of the depository bank or to make one inquiry at a later date, which includes two separate subjects of inquiry, namely, first, the balance as shown on the depository bank books as of the day inquired about; second, the items which were in transit on that date, isn't that the fact, and which were received thereafter? A. Yes, sir, it is a fact.

Q. Now assuming that the first inquiry were made so soon after the day of the examination that the items in transit had not been ascertained, or assuming that the first inquiry asked only for the balance which it has on the date inquired about, then a second inquiry would be absolutely necessary, wouldn't it, in order to prove the balance? A. Yes, sir.

Q. Now you have said on Mr. McGeehan's cross-examination that there were checks in box 55 where Mr. Scarlett was not the maker but where he was the payee; do you recall whether or not those checks were made by one or another

of the companies which Mr. Scarlett was director, officer or stockholder of? A. I think two of them were, at least, drawn on out-of-town banks by some company that Mr. Scarlett was interested in.

Q. You do not know, Mr. Smith, do you, whether or not the overdraft which complainant here claims against Mr. Scarlett excludes the proceeds of the alleged Long and Spinosa notes, you have no knowledge as to whether the amount that we are claiming as an uncharged overdraft excludes the proceeds of those notes on the other side of the account? A. No, sir, I haven't any knowledge of that.

Q. Now you said that you had testified in this matter in other suits; in how many other suits?

The Court: That does not make any difference.

Mr. Hinds: I want to explain how he happened to know, how he has such a remarkable recollection on this, so that there will be no inference against us on the other matters.

The Court: Well, he says it came out in another suit, that is enough.

Q. During the recess you have examined certain checks and notes, have you not? A. I have.

Q. Now I show you a list purporting to be list of Intercity Land and Securities Company checks paid by the Roseville Trust Company but not charged to the maker's account; have you seen this list before? A. I have.

Q. Have you made any comparison between the items shown on this list and the actual checks which you examined during the recess? A. Yes, sir, I have compared them all.

Q. Does this list correctly state the dates, makers and amounts of checks of the Intercity Land and Securities Company which were in box 55 or in your desk when the bank closed, which were paid by the Trust Company and which were not charged to the maker's account? A. With the exception of one check I think, there was one check missing.

Q. And which check is that? Are you sure that was in the Intercity list; I am now referring only to the Intercity. Did you mark on the list where any checks were missing?

Mr. Clark: It was left out of the list, was it not?

A. Yes, the check that is missing is not in this list at all.

Q. What is your answer to my question? A. You said as found in box 55?

Q. Or your desk, not charged but paid by the Trust Company? A. All those were of that nature.

Mr. Hinds: I offer this list in evidence as a summarization of the witness's statement, of course it is not an original document.

Marked Exhibit C-594.

Q. Now I show you another bundle of lists which is bound together, and ask you whether you have compared with the original checks the items contained on these several lists, checks of W. C. Armstrong aggregating $35,419.73, F. W. Holbrook aggregating $1,095, those shown in the bill, and $6,750 not included in the bill of complaint; Home Ice & Products Company $14,344.07, which includes two items that are listed here

as not having been found, which I will ask you about later, Antonio Miele $7,639.15, Frank Bruno $1,507.63; Frank Bruno Company, $15,-295.34, and ask you whether you found, with the exceptions noted, the original checks as listed on each of these lists, and whether those checks were found in box 55 or your desk, and whether those checks were not charged to any account but were paid by the Roseville Trust Company?

Mr. Stiefel: You mean found in box 55 or in his desk after August 13, 1913?

Q. Yes. A. Yes, sir.

Mr. Hinds: Then I offer these in evidence, and these I understand are copies of what has been served.

Mr. Clark: Yes, with some slight additions in ink which are noted.

Mr. Hinds: The Intercity list had several changes, and we will give them a new list. I will offer that in evidence.

Mr. Congleton: You have included in this page the Armstrong account?

Mr. Hinds: Yes.

Mr. Congleton: Isn't it true that the Armstrong matter has been settled. The reason I raise that at this time is because your Honor from time to time has stated that matters that have been settled and there is no loss that there is no sense of putting that in this case. I understand the Armstrong claim has been settled and he has been given a release.

Mr. Clark: No, the Armstrong matter stands at the present with a deficit of $22,000. His property when turned over

and sold at public auction yielded $22,000 less than the aggregate of the claims agreed upon between ourselves and Armstrong as a correct statement of his indebtedness.

Mr. Congleton: Hasn't Armstrong been given a release by the new bank?

Mr. Clark: No, sir, he has not.

Mr. Congleton: Why should they put it in for thirty-five thousand if it is only twenty-two thousand?

The Court: Well, that is a matter of argument.

Marked Exhibit C-595.

Q. During the recess have you also looked at certain things which were found at the close of the institution in box 55 or your desk? A. Yes.

Q. And have you looked at the two typewritten lists which I hand you? A. I have.

Q. Have you checked up the items on each of these lists with the original notes, with the exception of four Funger notes, concerning which I will ask you in a minute, and have you found that this list correctly stated the names of the maker, the names of the endorser, the amounts, and whether found on your desk or box 55, which notes were discounted by the Trust Company and were not charged on the books of the Trust Company; is that a fact?

Mr. Stiefel: When you say discounted by the Trust Company—

Q. And its funds used for that purpose.

Mr. Stiefel: I think we ought to have an explanation from Mr. Hinds.

The Court: You can ask him to explain.

Mr. Stiefel: When you say discounted by the Trust Company you mean discounted without the knowledge of the other officers of the Trust Company, isn't that what you mean?

Mr. Hinds: I did not intend to either exclude or include that feature. My question has to do with whether or not in had been discounted and not charged. I was not trying to bring in or exclude the element of knowledge of the directors, that would be the subject of question by yourself.

Q. What is the fact? A. That is true, as far as I know.

Q. I show you four notes purporting to be those of Robert Funger, and which have not been previously shown to you, and ask whether you can identify those, and, if so, whether they are as stated on these lists? Those were excluded from the questions previously because I hadn't yet seen them. A. I know that there was considerable Funger paper, and probably sixteen or eighteen thousand dollars owing at that time.

Q. Do you recognize those as Funger notes? A. And these are some of the Funger notes, yes, sir.

Mr. Hinds: Well, it is a matter of demonstration as to whether or not they check up with the statement. I offer these two in evidence as a convenient summary of the witness's testimony.

Marked Exhibit C-596 and C-597.

Q. Now I show you several bundles of checks and notes, and I ask you whether those are the

checks and notes concerning which you have just testified as being listed in those lists, and whether you have examined them and found each of them to be what it purports to be, namely, the authentic document of the maker or payee or endorser, as the case may be? A. These are the checks that I examined during the recess and checked up with the lists, and they are original checks found in box 55 or on my desk.

Q. And those are in each instance the authentic documents which they purport to be, bearing the signatures purported to be shown thereon? A. Yes, sir.

Mr. Hinds: I offer these in evidence.

Marked Exhibits C-598 to C-1142.

Q. Now turning to the two items in the Intercity list, the Armour certified checks, have you seen the checks themselves as to those two items? A. That was the Home Ice & Products Company, and not the Intercity.

Q. Well now, as to the Home Ice & Products Company list, there are two there that are marked and which excluded from my question, and in those instances you did not find the actual vouchers; is that correct? A. No, sir, I did not.

Q. Can you tell us about those two items? A. As I remember it those were two checks that were given the day before the bank closed and were certified and were still outstanding.

Q. Were those paid by the Trust Company? A. Paid when they were certified.

Q. Were they charged against the account of the maker? A. I think not.

Q. Those are the two which have been checked in that list with lead pencil? A. Yes, sir.

Q. Now I show you a bundle of original notes, many of them with a statement,, descriptive memorandum pinned thereto, and ask you whether you have examined those during the recess and whether they are the items which are listed in th list which you have testified to, and which are items found in box 55 or your desk, not charged but discounted with the funds of the Trust Company? A. Yes, sir, these are the items that I examined during the recess, and they are those that were found either on my desk or in the box.

Mr. Hinds: I offer them in evidence.

Marked Exhibits C-1143 to C-1460.

Q. Now there are the Belows two checks as listed in Exhibit G of the complaint and check of L. B. Haig, neither of which are listed in the typewritten list because there are only two of one and one of the other. I show you Exhibit G and ask you whether among the original checks which you have examined and which have been offered in evidence are the checks of Bellows and Haig in the amounts shown on Exhibit G and which were found in box 55 or the desk, which were not charged but which had been paid by the Trust Company? A. Yes, sir.

Q. Now I show you Exhibit H of the bill of complaint; you have read this over during the recess, have you? A. I have.

Q. Are there any borrowers listed on that list which in your opinion as a banker were of such financial responsibility at the time those loans were made that they were entitled to the credit as shown by the notes contained in that list?

Mr. Congleton: I objest, if the Court please, in this Exhibit H so many loans

made by the committee direct show in the minutes, and to ask a general question of this kind it seems to me is not proper.

Mr. Hinds: The charge in the bill on these is not that there was any irregularity but that it was negligent *per se* to have permitted loans to such irresponsible borrowers, and also the charge that these were made at the time when the reserve was depleted and contrary to law. The amount, by the way, aggregates one hundred and ninety-one thousand, and this witness being a banking expert we think it is competent, the man who actually made the loans and had first hand knowledge of them; I think it is competent to ask him whether any of them had the financial responsibility which would entitle him to the credit shown on this list.

The Court: I do not think the question is proper; I will overrule it.

Mr. Hinds: I assume my exception will be noted, and my offer to prove by this witness by that question and others in the same direction that these borrowers were not of financial responsibility.

The Court: The trouble is that you are asking the witness a question as to a multitude of individuals, each one of whom may stand in a different financial position. Now unless this witness knows the financial position of each one of them I do not see how it is possible for him to do it unless he has made a special study of the financial responsibility of each one of

these witnesses. I do not think he is competent to answer the question.

Q. Will you look at the general ledger for November 25, 1912 which, as I recall, was either the actual day or the day preceding a report to the Banking Department, which is in evidence, and state to me whether the small figures at the left of the items of depository bank balances, namely, 41 opposite the Irving National, 27 opposite the Union National, 10 opposite the New York State National of Albany, 15 opposite the National Shawmutt Bank of Boston, are in your hand writing? A. Yes, sir.

Q. Will you tell me when you made those, and for what purpose, and what they indicated to you? A. I think I made them at the time of making the extensions on November 25th.

By Judge Collins: Q. What year? A. 1912; I put them there for my own convenience.

Q. What do they indicate, dollars or hundreds or thousands of dollars? A. Thousands.

Q. Is it or not a fact that those numbers in thousands indicate the extent to which the balances as stated in the general ledger exceeded the true balances on deposit in those institutions? A. In the banks, yes.

Further CROSS-EXAMINATION by Judge Collins:

Q. Mr. Smith, they now produce the pass book which is marked C-103, and it begins 1909, does it not? A. I don't know what year, sir.

Q. Oh, that means the ninth month and the ninth day? A. 1910, evidently.

Q. And that was the opening of the account

by Mr. Dunn, was it not? A. Why, yes, sir, I think so.

Q. And that is the original pass book? A. Yes, sir.

Q. Now I have said, perhaps I mislead you, spoken of a duplicate having been furnished, perhaps duplicate is not the strict word, but I mean a new book starting with a balance on a certain date. A. Yes, sir.

Q. That is what you mean? A. Yes.

Q. And that is not that one? A. It is a continuation of that book really, you might say a continuation of the account in another book.

Q. But not a continuation from the balance? A. I don't know about that.

Q. It was a continuation of the book as it stood at the time the new book was opened? A. That is what I mean.

Judge Collins: Now I want you gentlemen to hunt up that book.

Mr. Clark: Yes, if you will give us a description of it.

Judge Collins: You have what purports to be a copy of it.

Mr. Clark: If you give us a description of it in writing we will send it to the Banking Department for them to trace.

Q. This box, 55 that was a box where you alone kept things that you wanted to have at hand and yet not visible to anybody else, wasn't that it? A. Yes, sir.

Q. It was your own box?

The Court: He went all over that.

Q. No one but yourself had access to it? A. Except the boys in the bank.

CROSS-EXAMINATION by Mr. Stiefel:

Q. These pencil figures to which your attention was called at the end of Mr. Hind's examination, are you absolutely positive that those figures were made by you on November 25th, 1912? A. Not positive that they were made on that exact day, but they were made at that time, during that week some time, and I think upon the first of that week.

Q. There is nothing to indicate that these figures stand for thousands or hundred thousands, or dollars or cents, is there? A. Not on their face, no, sir.

Q. Is there any other place in that book in which you jotted down in pencil memoranda of a similar character? A. I think there are other places, yes, sir.

Q. And they were of the same character as this, that is to say, known to yourself but yet unintelligible to anyone who did not know their purpose? A. Yes, sir.

Q. Now Mr. Smith, in this box 55 besides all these notes and checks with regard to which you testified this morning, there were a large number of bonds and mortgages were there not, or some bonds and mortgages and other securities? A. I think there were some mortgages, yes, sir, just what other securities were there I do not remember now.

Q. You were not present when box 55 was opened, were you? A. I was not.

Q. Is it not a fact that some of these bonds and mortgages or securities were deposited with you in connection with these irregular loans or irregular purchases of bills? A. Why I know of

one instance, that of William C. Armstrong, but whether it was to cover any of his irregular transactions or not I do not remember without refreshing my memory.

Q. Now Mr. Hinds used the expression once or twice there, discounted by the bank, in referring to notes, or paid by the bank, in referring to checks, and you answered most of those questions affirmatively. You do not mean to say that each transaction involving either the purchase of the note or the payment of the check was a transaction which was known to the board of directors, do you? A. No, not generally.

Q. Not with reference to these items in box 55 or that were found in your desk? A. Some of the notes in box 55 had been passed regularly by the executive committee.

Q. There were some papers in there that had regularly passed? A. Yes, sir, a good many notes in fact that had been regularly purchased by the institution but hadn't been made good the time they came due.

Q. But the executive committee didn't know that they had not been paid and had gone into box 55? A. I think not.

Mr. Hinds: If your Honor please, I would like to offer in evidence certain documents that I have had sent up from the Court of Chancery; they have been on your desk; are they there now, if so I will select what I wish. The documents, as I recall them, are documents which are on file in the Court of Chancery, some of them in this suit and some of them not in this suit.

The Court: Do you mean the record?

Mr. Hinds: No, some of them are in a different proceeding entirely. I want to offer them in evidence, they have been sent up here from the chancery clerk. In the matter of the application of the Banking Commissioner for authorization under the statute to sell certain assets. I think that is the title of the proceeding—the papers are entitled "In the Matter of the Roseville Trust Company in charge of Commissioner of Banking & Insurance, under the Provisions of Chapter 171 of the Laws of 1913, docket 37-310."

The Court: You want to offer the whole record, do you not?

Mr. Hinds: Yes, that will save time.

The Court: You want to offer the whole record and call attention to particular papers; is that it?

Mr. Hinds: Yes.

The Court: Well, I do not know whether that is proper or not. What objection is there to that?

Mr. German: I object to it, I would like to know first the purpose.

The Court: Counsel must state the purpose.

Mr. Hinds: The purpose is in support of the allegation of the bill that the Commissioner has compromised with certain of the directors, pursuant to statute, pursuant to the authorization of the Chancellor, and without prejudice to the rights against the other directors. That is an alle-

gation in our bill, and the offer will include papers in support of that allegation.

Mr. German: I object to it.

Mr. Stiefel: I do not think the whole record will have to go in.

The Court: Do you object to the whole record being offered?

Mr. Stiefel: Yes, as not being relevant in this case.

Mr. German: I object to it.

The Court: Then it will not be offered. I supposed that you wanted the whole record to go in, but if you do not want the whole record to go in why then counsel may offer particular parts of it. Now he has offered one part of it for the purpose that he has indicated, for the purpose of showing the compromise. Is there any objection to that?

Mr. Fairlie: Yes, on behalf of the third party defendants I insist upon the whole record going in.

The Court: Well, I think you are entitled to have the whole record go in. It is a rule that where a part of a record is offered in evidence the whole shall go in if it be required, that is the rule, you cannot offer a bill in evidence or a decree in evidence without offering the rest of the proceeding.

Mr. Hinds: We desire to have it all go in.

The Court: Now one of the counsel in the case wants the whole record to go in and I will allow the whole record to go in.

If any other counsel desire to object they may state their objection on the record. I cannot imagine how there could be any objection.

Mr. German: I object on behalf of director Keim on the ground it is immaterial so far as his liability in this case is concerned.

Mr. Stiefel: I make the same objection, your Honor.

Mr. Hinds: Since I have stated part of the purpose I would like to complete the purpose.

The Court: Yes, but the trouble about your method of proceeding sometimes is that you combine into one several things. It is better, as there are so many counsel in the case and so many conflicting interests, to state one thing at a time. Now state your next purpose.

Mr. Hinds: The next purpose is to show from this record the fact that the sale by the Banking Department to the Mutual Bank of Roseville was made pursuant to order of the Chancellor and pursuant to notice to each and every defendant here present and to others entitled by law, and also the sale of all the assets, and for that purpose I refer particularly to the proof of mailing and proof of other service of said notice.

The Court: Is there any objection to that?

Mr. Stiefel: Is it re-offered, is it offered a second time?

The Court: No, he is calling attention to this particular thing. Now do you object to this particular part of the record?

Mr. Stiefel: I do, your Honor. I don't think anything that counsel has stated there is binding upon my client in any way or is relevant to any matter charged in the bill of complaint against my client.

The Court: How far this record may be evidence of the facts therein stated I do not decide now, that will be a matter for future consideration. I think that the record itself is evidence for some purposes, certainly evidence of what the Commissioner has done in the way of realizing on the assets, and being competent for that purpose it is admissible; now whether it is admissible for any other purpose, as I say, is a matter of argument.

Mr. Hinds: The further purpose is to show the proof of mailing or other service upon each and every one of these defendants of the application for authorization to make the compromise, referring to the agreement which is also part of the record, showing that it was without prejudice to the suits against the original defendants in this action, and also for any other purposes which I may argue later.

The Court: Well, I do not know about that. You have stated one definite purpose. Is there any objection to that?

Mr. German: I object to it being introduced for that purpose on the ground that even if it were all true it would not

affect the question of negligence on the part of Doctor Keim.

Mr. Stiefel: I make objection on the ground that any proof of mailing of a notice cannot affect my client's rights with respect to the subject matter of the inquiry of which notice is given; the giving of such notice does not make any determination of the Court of Chancery *res adjudicata* or bind him in any way with respect to that matter, simply because there is proof here of a notice of mailing to him.

all of the defendants may urge, and I other purpose you have in offering this record.

Mr. Hinds: I haven't in mind any other purpose except that I would like to say generally for any purpose which may be obvious on the face of the paper. I cannot anticipate all the objections that all of the defendants may urge, and I would like to have the benefit of any possible material evidential matter that is contained in this record.

The Court: How far the record will be evidence will have to be determined when we come to the argument.

Mr. Hinds: The papers in the record are docket 37-310, whose title I have already read "Order confirming sale and approving certain compromise. Proof of mailing. Petition. Order to show cause on petition of receiver; praying directions as to sale; memorandum of protestants 2; order authorizing assignment

of mortgage; on application to fix compensation, counsel fees and expenses of supervision and liquidation; order providing compensation, etc.; petition; on petition of receiver praying directions as to sale; order to show cause. Order extending time for presentation of claims. On petition, order approving assignment of mortgage. On application to fix compensation, counsel fees and expenses of supervision in liquidation; notice. Order authorizing and confirming payment of dividends. Order conferming sale and approving certain compromises. Notice of motion. On petition of Commissioner of Banking and Insurance praying direction as to sale, etc. Proof of mailing attached to the petition which has been previously marked, Agreement of December 10, 1913 between George M. LaMonte, as Commissioner and the Mutual Bank of Roseville.

Now, your Honor, that is all of our case up to this point, accepting your Honor's suggestion as to the writing out of the further evidence of the witness Cloran, also of the evidence of one of the banking examiners who administered the matter, and one of the executive officers of the Mutual Bank which purchased the assets and has certain knowledge respecting the amount of the realization on the sale to that institution. As to the cross-examination I will leave that to your Honor's suggestion.

The Court: Well, the last witness that you refer to stands upon a different foot-

ing I think from the expert accountants. If counsel want to examine that witness in open Court I suppose you can call him. Is he here?

Mr. Hinds: I do not mean to say he is ready to be called now, but I mean if counsel would prefer to have him examined in open Court upon notice we can produce him here for that purpose; it is merely formal proof.

The Court: What is the proof you want to make?

Mr. Hinds: Respecting the character and amount and extent of assets which were turned over by the Banking Department pursuant to the Chancellor's order, sold to the Mutual Bank; this witness will be one who represented the Mutual Bank and will thus know what happened.

The Court: That evidence could best be reduced to writing I would say, subject of course to cross-examination if cross-examination is necessary. It would be better for him to furnish a list, I suppose every counsel would agree to that, let him furnish a statement of what re purchased and the price at which he purchased it; if there are any other particulars in reference to it why you can state them and then if counsel are satisfied with that statement you can put it in, and if they want to cross-examine with reference to the statement or any question about it he can be cross-examined on his statement.

Adjourned until June 8, 1917, at Chancery Chambers, Newark, N. J.